IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 1:22-cr-20290-BB-1

UNITED STATES OF AMERICA,

Plaintiff, January 10, 2024
9:15 a.m.

vs.

ERIC DEAN SHEPPARD,

Defendant. Pages 1 THROUGH 263

TRANSCRIPT OF TRIAL DAY 16
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 12

Appearances:

FOR THE GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE
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ALSO PRESENT: Special Agent Sarah Halleran

I N D E X

W I T N E S S

E X H I B I T S

(Call to order of the Court, 9:15 a.m.)

THE COURT: Hi. Good morning to everyone.

MS. WEINTRAUB: Good morning, Your Honor.

THE COURT: I know that Liz did -- let me acknowledge the presence of the Defendant.

I know that Liz did advise that we have one juror who is running a little late with the train.

Go ahead and have a seat.

But I understand there is an issue to address?

MS. WEINTRAUB: Yes, Your Honor, there is. That's with regard to rebuttal.

Your Honor, it's our understanding that they're going to call Alex Zaslow in rebuttal. We asked them to narrow it down and to please provide us the basis for which they intend to call him, because it's voluminous to prepare anything with Zaslow's name. Quite candidly, we were surprised that they did not call him in their case in chief.

The Government refused to advise us why they're calling him or narrow it down. We emailed them. We asked them for the professional courtesy of advising us so that we can prepare and there are no further delays in this case and we can move forward.

THE COURT: All right. Well, the Defendant hasn't rested his case.

MS. WEINTRAUB: Correct.

THE COURT: So it's premature to hold the Government to an announcement as to what the rebuttal evidence may be. But, Ms. Jimenez, do you know at this point?

MS. JIMENEZ: I don't fully know, Your Honor.

THE COURT: All right. So I think to ask the Government at this point to state what it may not know, since you haven't concluded your case, is somewhat a waste.

MS. WEINTRAUB: Well, Judge, she said now she was calling Alex Zaslow.

THE COURT: That's right.

MS. WEINTRAUB: So they must know what they're going to ask Zaslow because the next two witnesses that are going to testify have nothing to do with Zaslow.

THE COURT: Is that correct, Ms. Jimenez?

MS. JIMENEZ: I don't know that, Your Honor. They have a tax accountant or some sort of accounting expert that they are calling as well. That's going to be their final witness, I believe. I have no idea what -- you know, everything that he's going to say. They've amended their expert disclosure five times.

THE COURT: That's fair. I'm not going to press the Government any further.

Any other issues that we need to address?

MS. WEINTRAUB: No, Judge. We just wanted to alert the Court because we don't want to have a further delay, and obviously we intend to rest today shortly. They know who we're calling and -- I know. Famous last words. We're trying. All the witnesses are here. We're ready to go.

THE COURT: All right, then. I do want to advise for purposes of scheduling that I have a meeting right at noon. It is in this building. So we'll need to stop at five to noon, and then we'll take our one-hour recess for lunch, if that's all right with both sides.

MS. MARTINEZ: Your Honor, may I confirm with Defense counsel the order of witnesses?

THE COURT: Has it changed from yesterday?

MS. WEINTRAUB: No. No. And I told Ms. Martinez that about 10 minutes ago.

MS. MARTINEZ: Well, she first told me she refused to tell me and then she kindly decided to tell me. So I just want to --

THE COURT: Okay. I need to remind each of you at this point -- each of you, meaning all counsel of record -- that you are officers of the court first and foremost. And your actions, and your comments, and your facial expressions, as well as your -- your non-verbal conduct in the courtroom is observed not only by the Court but by these jurors that have devoted themselves to acting as the -- and serving as the judges of facts. It is most unfortunate when we observe conduct that is not befitting of officers of the court.

So I would remind you of your duty of professionalism, both inside and outside of the courtroom but certainly during the course of this trial. And that is my comment for this morning.

MS. WEINTRAUB: Judge, as I advised yesterday, the witnesses are going to be -- after Mr. Kallman, it will be John Jorgensen, Kerby Kleef, Glenn Sheppard, and Scott Bouchner. I believe that's the order I gave the Court yesterday.

THE COURT: And that is the precise order that was given to the Court last night.

MS. MARTINEZ: Yes, Your Honor. And part of the reason that I'm asking is because, with respect to Jorgensen, items were given to me late at night on Sunday. And with respect to Bouchner, completely revised and additional 37 pages of charts were given to me late Saturday night, and also databases that I haven't been able to print because the print is very small. So part of the reason that I'm asking is because it requires a level of organization as to what I need to have in front of me.

And I am -- I may be in a position where I actually need to ask for assistance from the Defense to provide printed copies, because -- and Mr. Cavallo has already partially helped me as much as he can. But I may need to ask for additional help because I have not been successful in printing everything that they provided late Saturday night and late Sunday night.

THE COURT: All right. So as a professional courtesy, Mr. Cavallo, are you able to assist Ms. Martinez?

MR. CAVALLO: I am, Your Honor.

THE COURT: All right, then. Then that should not be an issue, and your organization should likely comport with the order of witnesses.

So if we can bring in Mr. Kallman. We do have all of our jurors that are present.

Yes. Thank you.

And I do want to remind the Government, since the Government is tasked with the responsibility of having each of the uploaded exhibits on a clean laptop, as well as a complete exhibit list for the jurors, once they begin their deliberation, which most likely would occur tomorrow.

MS. MARTINEZ: Your Honor, before the jury comes in, I just wanted to advise the Court, with respect to this witness, it will very much help to move things along if I can show the witness certain documents that are in evidence briefly just to, at a minimum, identify his knowledge or not. And this witness relates to four out of the six loans that were funded. So that is part of the reason for asking the level of his involvement and needing to move things along.

So the reason I mention that to the Court, Your Honor, is just because I ask for some allowance if the Court does not immediately see the relevance of my questioning or why I'm briefly showing a document that's in evidence.

MR. ETRA: Your Honor, the rule that Your Honor has that we've had to live under for cross-examination is we can't show a witness a document the witness hasn't seen, and we've been held to that. I think the exception has been the Defendant, when he testified, when they crossed him. And she's asking for an exception and we didn't get those exceptions.

THE COURT: With any witness, if the witness does not know the document, then it makes no sense to ask the witness questions with regard to that document.

There were certain exceptions with regard to individuals that came in through entities that produced a volume of discovery, and certainly the bulk of those exhibits were admitted into evidence. And as such, that individual as the keeper of those documents -- it was certainly fair to ask that individual with regard to those documents. This is different. The Rules of Evidence are the Rules of Evidence, and the Court certainly is going to comport with what the law requires.

So Mr. Kallman, welcome. Good morning. If you'll remain standing, as well as everyone else, so we can bring in the jury.

(Before the Jury, 9:22 a.m.)

THE COURT: All right. Good morning, Ladies and Gentlemen. It's good to see each of you.

Please be seated, everyone.

We are ready to get right back to work.

Recall we were in the middle of the cross-examination of Mr. Kallman.

Mr. Kallman, let me remind you, you were previously placed under oath. And let us proceed.

Ms. Martinez?

(Pause in proceedings.)

CROSS-EXAMINATION [CONTINUED]

BY MS. MARTINEZ:

Q. Good morning, Mr. Kallman.

A. Good morning.

Q. Yesterday we spoke about companies that you have an interest in because you have invested with Mr. Sheppard, correct?

A. Yes.

Q. And you have an interest in the shopping center in Orlando through your company called WAPD Holdings, correct?

A. Correct.

Q. That company has 48 percent ownership, meaning almost half, of another company called HM Four, LLC, which then 99 percent -- that -- HM Four owns 99 percent of HM-UP Development Alafaya Trails, correct?

A. I believe so.

Q. And then HM-UP Alafaya Trails owns the Orlando shopping

center, correct?
A. I believe so.
Q. There's another company called HM-UP Development Alafaya Trails TRU, T-R-U, capital letters. You also have an interest in that company; isn't that true?
A. I believe TRU is the company that we had when Toys "R" Us was the tenant, and then there was many iterations through refinancings and other business dealings. So I'm not sure if TRU is actually still a valid company for holdings.
Q. But you -- as part of your investment, you had also invested and had an interest in that company, correct?
A. At one time, I believe so, yes.
Q. And as part of this joint investment with Mr. Sheppard, you are liable on a, what, approximately $20 million loan on that property?
A. On the whole property, yes.
Q. In Orlando?
A. Yes.
Q. Now, you indicated that you do come to Florida some of the time. I'm going to focus you on a certain time period.
A. Okay.
Q. In 2019, before the pandemic, did you come to Florida once a year, twice in that year?
A. In 2019?
Q. 2019.

A. I owned a residence in Florida for a while, so I'd come down with my family. So I'm sure I was here more than once in 2019.
Q. In 2019, did you have more than one business meeting with Mr. Sheppard?
A. For the whole --
Q. In 2019 -- physical -- physical here in Florida?
MR. ETRA: Objection. The question is unclear. "Business."
THE COURT: Overruled. Does the witness understand the question?
BY MS. MARTINEZ:
Q. Meaning as opposed to getting together socially.
A. I'm sure we did.
Q. Did you have -- in 2019, did you go to Orlando, to the property that you own?
A. I don't recall in 2019 if I was there. Could have been.
Q. Now, focusing on the approximately, what, 18 years of knowing Mr. Sheppard, did you say -- how long have you been investing together with him?
A. I know him a little longer than that.
Q. How long do you know him?
A. I would say probably -- my daughter is -- 23 years maybe.
Q. And during that span, in addition to meeting with him for business, you meet with him socially, correct?

A. That's correct.
Q. And your family meets with him and his family meets with your family, correct?
A. That's correct.
Q. So you consider him to be your friend, correct?
A. Yes.
Q. And you're his friend, correct?
A. Yes.
Q. Now, once the pandemic came, or just around that time, as I understand it -- we went through a loan document yesterday from One Florida Bank. Do you recall that?
A. Yes, I do.
Q. Now, there was a commercial loan -- well, actually it was a person line -- a person loan for $600,000 that you and Mr. Sheppard took out jointly, correct?
A. That's correct.
Q. And the purpose of it was to have -- according to the document that we went over yesterday, the purpose of it was to have additional funds towards work that was going on at the Orlando property, correct?
A. That's not correct. That document was not a loan document, which you had just referred to.
Q. Oh, no. I'm sorry. I just meant the purpose that was stated in the document. Was the purpose stated in the document wrong?

A. That was a deal memo.
Q. Okay. And was the purpose stated in the deal memo wrong?
A. No. The intention was to use that money for the project.
Q. Okay. And again, that personal line was guaranteed by you personally and Mr. Sheppard personally, correct?
A. That's correct.
Q. So you would be personally liable, not your company, if that money wasn't paid, correct?
A. That's correct.
Q. And the interest rate was a variable interest rate that was not fixed. It would go up and down with the market; isn't that right?
A. I believe so. That was market at the time, when that was drawn up.
Q. And it was actually -- I realize that you extended it, but it was actually initially a very short-term loan. Within the same year, 2020, it had to be paid back, maturity date, correct?
A. I believe the initial term was six months, but it was discussed with One Florida Bank that it might be extended. They were interested in doing business with us.
Q. Now I'm going to go back just -- again, just before the pandemic, 2019, 2018, the years before. You were not involved in the decisions with respect to HM-UP Development Alafaya as to whether or not any -- anybody was a W-2 employee or a 1099.

You were not involved in those decisions; isn't that right?
A. That's correct.
Q. And with respect to HM Four, as to whether it ever had any employees, W-2, whether it had any contracts, such as 1099 contractors, you were not involved in those decisions either as to HM Four, correct?
A. Eric is the managing member of the entities and he manages the property. That's not my role.
Q. So with respect to decisions regarding whether to have an employee or not to have an employee with respect to HM Four, that would be Eric Sheppard, not you; is that right?
A. It would be the managing member.
Q. And that's Eric Sheppard; isn't that right?
A. Yes.
Q. And with respect to HM-UP Alafaya Trails, the decision as to whether to have a 1099 contractor or a W-2 employee, where you do the withholdings -- that decision would not be yours. It would be Eric Sheppard's; isn't that right?
A. Again, that would be the managing member.
Q. And the managing member is Eric Sheppard?
A. That's correct.
Q. So likewise -- so that's the way that it was in like 2018, 2019. That didn't change in 2020 and 2021, did it?
A. Eric's always been the managing member.
Q. Right. So those decisions were Eric Sheppard's, not yours,

correct?
A. They weren't my decisions, but we always discussed business as it pertained to the property.
Q. Did you have specific discussions with Mr. Sheppard as to who would be a W-2 employee and who would be a 1099?
A. No.
Q. So not that?
A. No.
Q. You would have other decisions maybe regarding the profitability of the business, the return of capital, that type of discussion, correct?
A. Eric always kept me informed on the financial aspects and other aspects of the project.
Q. I mean, in fact, what you have done is provide funds to Eric Sheppard as an investor, correct? So your primary contribution is financial; isn't that right?
A. The majority of it is, but I try and help whenever I can with him, you know, with business or, you know, business decisions that would affect the property.
Q. Right. As an investor and as a very good businessman, your interest in your investment is that you not lose the money that you invested, correct?
A. Yes.
Q. And that -- for the investment, that you make some profit on the investment, that you at some point get -- at some point,

whether short-term or long-term, that you get more money back than what you put in; isn't that right?
A. I think that defines the term investment.
Q. Right. So you have an interest in protecting your investment with Mr. Sheppard, correct?
A. I have an interest in protecting all my investments with various people.
Q. Now, with respect to again HM-UP Alafaya, that company, you were not a signer on the bank accounts, correct?
A. Could you --
Q. You did not have signatory authority on the bank accounts, correct?
A. No, I do not.
Q. So you did not make decisions about how to use the money that went into the accounts that were at SunTrust Bank for HM-UP Development Alafaya, correct?
A. No. I had no signature authority.
Q. And likewise, HM-UP Alafaya Trails had an account in Wells Fargo. You had no signatory authority in that account either, correct?
A. That's correct.
Q. Now, you are aware that there were accounts, bank accounts, into which the rent was being deposited, correct?
A. Of course.
Q. And you were aware -- you were aware of the rent receipts

during any time period, from -- let's say from before the pandemic and during the pandemic, you were aware of the fact that the rent receipts were coming in such that you were able to pay the mortgage on the land; isn't that correct?
A. That's correct, until Toys "R" Us went bankrupt.
Q. Until?
A. Toys "R" Us filed bankruptcy.
Q. Let me ask you: Have you looked at the bank accounts?
A. In what regard?
Q. Have you seen the bank statements -- let me ask you specifically as to a time period. Have you seen the bank statements of HM-UP Alafaya, LLC at SunTrust Bank -- have you seen the bank statements from 2020 to 2021 showing the receipt of rent into those accounts? Have you seen those bank statements?
A. I have not.
Q. And with respect to Wells Fargo, the account that was also in the name of HM-UP Development Alafaya Trails, that was receiving rent money, 2020 -- well, I'm going to go to this time period for that account, 2019, 2020, 2021. Have you seen the account of the rent that was being -- from the same shopping center, different tenants -- have you seen those bank records from Wells Fargo showing the rent money coming in in 2019, 2020, 2021?
A. No.

Q. So whatever knowledge -- whatever understanding you have, it's not from bank records, correct? It's not from bank records.
A. No. But I would get reports from Jeanette. I would call up and I'd say: "Hey, did all the rents come in?" And one of the common -- one of the tenants -- one of the larger tenants would pay late into the month a few days, which we would always discuss. And then --
Q. Which time period are you --
MR. ETRA: Objection --
THE COURT: Yes. If you would let the witness answer the question.
BY MS. MARTINEZ:
Q. Go ahead, sir.
A. I just lost my train --
Q. Let me ask you this: You were talking about a tenant that was late at one point. Isn't it true that the tenants made up the money within the next quarter, and actually there was -- from a national -- from the national tenants, by the end of the year, all the money in rent was made up?
MR. ETRA: Objection.
BY MS. MARTINEZ:
Q. Isn't that true?
MR. ETRA: Form. Unclear what tenants we're talking about.

THE COURT: Does the witness understand the question?

THE WITNESS: I think so.

THE COURT: All right. You may answer the question. Overruled.

THE WITNESS: I don't think that's totally correct. Because what you're saying is at the end of the month it was trued up. If they paid late every month, it would fall into the next year.

BY MS. MARTINEZ:

Q. Have you reviewed the bank records to verify what you just said?

A. No.

Q. So this is something that somebody told you, but it's not -- you have not looked at the bank records to see -- to see that?

A. I have not looked at the bank records, but I was told this by more than one person.

Q. In the -- in addition to -- the main company that you have is called Bookazine, correct?

A. That's correct.

Q. In addition to that, you have a company called SBK Realty; isn't that right?

A. That's correct.

Q. So during 2020, 2021, you do recall an amount of money, roughly $20,000, coming from your SBK company into

Mr. Sheppard's -- the accounts that Mr. Sheppard has signatory authority over? Do you recall that? Do you recall about $20,000 coming from your company?

MR. ETRA: Beyond the scope and relevance.

THE COURT: Overruled. I'll allow it.

THE WITNESS: At one point SBK was paying the debt service on the outparcels. But to my knowledge, my CFO was paying that directly out of my account.

BY MS. MARTINEZ:

Q. Do you recall -- are you familiar with the fact that money from the accounts that Eric Sheppard had, that he was signer on -- that $30,000 went out to SBK during the pandemic period --

MR. ETRA: Your Honor --

BY MS. MARTINEZ:

Q. -- care of -- care of Bookazine?

MR. ETRA: Relevance and beyond the scope.

THE COURT: Noted. Overruled.

BY MS. MARTINEZ:

Q. Do you recall money from your company during the pandemic going to Eric Sheppard accounts and money from Eric Sheppard accounts going back to SBK? Do you recall that?

A. From which company are you saying the money came or went back to?

(Pause in proceedings.)

BY MS. MARTINEZ:
Q. One second. I'll find the financial summary.
A. Sure.
(Pause in proceedings.)
BY MS. MARTINEZ:
Q. It was to Alafaya Trails, SunTrust Bank, and then back out to you -- I mean to SBK. You don't recall that?
A. You're talking four years ago, right? In 2019 you're referring to?
Q. No. 2020 and 2021, the time of the pandemic.
A. It could have been. I mean, during the pandemic everything was, you know, in a lot of disarray, so I can't say for sure. And I was sick at the time.
Q. Well, I mean, you were sick for -- at the beginning of the pandemic, right --
A. I was sick at the end of March into April.
Q. Right. Of 2020, right?
A. That's correct.
Q. Yeah. So again, talking about Mr. Sheppard's business and your investment with him, Jennifer Sheppard is not involved in the business that you are a joint partner with Eric Sheppard, correct?
A. I don't know that to be correct.
Q. Is she involved -- is she involved in any of the decisions regarding who's an employee and who's not an employee?

A. I wouldn't have that knowledge.

Q. Is she -- well, have you ever discussed business with Jennifer Sheppard?

A. At certain points. She understands it. She knows what the business is.

Q. Has she -- well, I mean, she knows what her husband does for a living. That's right?

A. Yeah. That's correct.

Q. That's right. My point -- are you working together with Jennifer Sheppard on your business -- your joint investment with respect to HM-UP Alafaya Trails? Are you working with Jennifer Sheppard on that?

A. Eric's still a manager.

Q. And is she involved in any of the decisions regarding the building and the tenants?

A. I wouldn't know what he discusses with her on that nature.

Q. You have not had any discussions with her of that nature?

A. Regarding buildings and construction? Is that what you're asking?

Q. Do you work with Jennifer Sheppard as part of your investment? Do you work with her?

A. Not really.

Q. No. And with respect to HM Four -- remember, your company WAPD Holdings owns 48 percent of HM Four and HM Four owns 99 percent of HM-UP Alafaya Trails -- Jennifer Sheppard has no involvement with HM Four; isn't that correct?

A. I'm not a hundred percent sure what Eric discusses or he doesn't discuss with her.

Q. You don't -- you're 48 percent owner of HM Four?

A. Correct.

Q. You don't discuss HM Four with Jennifer Sheppard; isn't that right?

A. No, not as cost of business. I deal with Eric as the managing member.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. During the pandemic, you're aware -- you participated in at least one loan that Mr. Sheppard obtained in the name of HM-UP Alafaya Trails; isn't that right?

A. Define "participated."

Q. Well, do you remember -- well, let me just take you there. From roughly July 24th, 2020, when an application was made, to September 25th, 2020, when the loan was funded, you participated in working with a lady called Nelia Palancar, who was assisting you and Mr. Sheppard in obtaining an Economic Injury Disaster Loan for HM-UP Development Alafaya Trails; isn't that right?

A. I don't know if that was the woman's name. I received one phone call, which lasted about a minute and a half, to that regard.

Q. Do you remember providing your driver's license as one of the owners who had an interest in HM-UP Development Alafaya Trails in order to be able to get that loan?
A. My driver's license is on file in the office.
Q. You don't recall providing that driver's license to Eric so that he could provide it to Ms. Palancar?
A. As I said, Eric does have a copy of my driver's license in the office as standard practice of our business if we have to get loans or do any other kind of business. I can't have him calling me every five minutes to keep resending him the same document.
Q. I'm just asking if you -- you did authorize Mr. Sheppard to obtain an Economic Injury Disaster Loan on behalf of HM-UP Development Alafaya Trails as a 48 percent owner -- you authorized that loan; isn't that right?
A. Mr. Sheppard had indicated to me that he was trying to apply. I thought it was -- you know, it was a fine idea at the time. I mean, that was -- you know, there was programs out there to help businesses. And if it was applicable, why wouldn't we, you know, try and apply for it.
Q. You did not write the application for that Economic Injury Disaster Loan, correct?
A. No.
Q. Did you verify any of the information on the application?
A. No.

Q. You are aware that at least with respect to that particular loan in September 2020, $149,900 went to the HM-UP Development Alafaya Trails account pursuant to an SBA Economic Injury Disaster Loan? You're aware that that loan was funded, correct?
A. I don't remember I was aware that it was funded.
Q. You're aware that Mr. Sheppard obtained an Economic Injury Disaster Loan in the name of your company that you have a 48 percent interest in, HM-UP Development Alafaya Trails, during the pandemic in 2020 -- you're aware that he obtained funding of an Economic Injury Disaster Loan, correct?
A. I wasn't aware that the funding came through. I know that he was going to apply for it. He had mentioned it to me. Again, as I said, if there was a program out there that was applicable for our business, we should try and apply for it.
Q. Okay. So is it -- now that I'm asking you, is this the first time that you're aware that on September 28th the bank account of HM-UP Development Alafaya Trails received $149,900 of an Economic Injury Loan where your driver's license was used? Is today the first time you hear that it was funded?
A. I don't know if -- that specific date, that's when the money went in. I wouldn't have knowledge of a specific date.
Q. Okay. Not this specific date. Is today the first time you're aware that that loan was funded?
A. I was aware that he applied and I remember having a

conversation. I think he said we got one or two small loans.
Q. So you were aware that there were one or two small loans, but you weren't aware that -- I'm just taking one at a time -- that the one loan where your driver's license was provided and you spoke to Nelly Palancar, that it was $149,900 -- that amount you were not aware of?
A. No. And I don't know if it was Nelly Palancar, as you say. A woman called me on the phone. I spoke to her for about a minute and a half.
Q. And it related to an Economic Injury Disaster Loan? Do you remember that, that that --
A. I remember it was to verify some information.
Q. You don't remember what type of loan it was?
A. No. I was not -- I don't remember specifically what type of loan it was. I know it was something to do with -- you know, the CARES Act. They were coming out with many different programs at the same time. I was trying to do the same thing for my own business, so I don't know what specifically it was called.
Q. So just -- just to clarify what we're talking about, the particular one that I was asking you that was applied for July 24th, 2020, and it was funded September of 2020, was an Economic Injury Disaster Loan where the money comes from the United States Treasury, SBA. You understand that that was one of the programs that was available, right?

A. I remember hearing the term SBA.
Q. Do you remember the term "Economic Injury Disaster Loan," sometimes abbreviated into EIDL, Economic Injury Disaster Loan?
A. No. I remember SBA.
Q. So understanding that it was for an Economic Injury Disaster Loan, as I talk to you now is the first time that that really is coming into your mind?
A. No. As I said, I know that Eric was applying. I remember -- I definitely remember SBA. I don't remember all the other acronyms that you're saying after it.
Q. Well, so do you know that there was a different program that was called the Paycheck Protection Program, not the Economic Injury Disaster Loan program -- do you know that there was a different program called the Paycheck Protection Program?
A. That -- what you're referring to is the PPP program?
Q. Yes.
A. Yes. I'm aware of that.
Q. Okay. And you are aware that these are two different programs, right?
A. They sound to be.
Q. Okay. And you're aware that they have different purposes, right?
A. I'm not aware that they have different purposes.
Q. Okay. Economic Injury Disaster Loan -- you're not aware that that is to remediate economic injury?

A. No.

MR. ETRA: Your Honor, he says he doesn't know.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Are you aware of what the Paycheck Protection Program was for?

A. Yes. I applied for it for my own business.

Q. And you had to have W-2 employees, meaning employees that you withhold income tax -- that -- that you withhold Medicare, Social Security, regular employees to be able to apply for the Paycheck Protection Program; isn't that correct?

A. What I understood about the Paycheck Protection Program -- when my CFO first was applying for it, we also consulted with my -- my accounting firm. And I remember the partner calling me up on the phone and telling me: "Robert, this is very complicated because they are changing the rules from Monday to Tuesday, Tuesday to Wednesday, Wednesday to Thursday. On Monday they're allowing you to apply, basically taking" -- you know, I'm going to give an example. You could deduct rent. Then Tuesday you couldn't deduct rent, but Wednesday you could deduct insurance. It was very complicated. And I remember my CFO spending an inordinate amount of time trying to put together the documents, and this is a seasoned guy who's worked for large companies, and he indicated to me it was very confusing. And we went out, you know, to obviously do our best to put the information forth, and we did obtain the loan.

Q. How much money did you obtain?

A. I believe there was two loans, to the best of my knowledge. I think one was a little over a million. And the second one I think was close to that amount.

Q. So you have a good number of employees; isn't that right?

A. That is correct.

Q. So going back to the investments that you have with Mr. Sheppard, and the pandemic period, we discussed the one loan that you do remember speaking to someone, to a female, regarding authorizing a loan for HM-UP Development Alafaya Trails. Do you recall Mr. Sheppard asking you to participate in a loan via PayPal to WebBank, also for HM-UP Development Alafaya Trails, but that would be in May of 2020 and it would be a Paycheck Protection Program loan? Do you recall that?

A. No.

Q. Are you -- do you know that that loan was funded?

A. I had had several conversations with Eric regarding different programs that were out there. I know he was trying to avail whatever he thought could be helpful to the business and the situation -- you know, with the situation. It was just -- I was trying to do the same thing at my main company. So obviously I knew there was programs out there. We were trying to see which -- you know, what we could get, what would work, and how to fill out the paperwork. It was very complicated.

Q. I understand. I'm just asking you some very specific questions, and the specific question is: Are you aware that on May 1st of 2020 WebBank funded a PPP loan that was applied for by Mr. Sheppard under the name of HM-UP Alafaya Trails, a company that you have a 48 percent interest, and it was funded to the amount of $146,457? Did you know that?

A. No.

Q. Did you know that the money did not go into the HM-UP Development Alafaya Trails account but instead was deposited into the HM Management and Development account? Did you know that?

A. I don't get into that type of detail. But what I do know is that I don't think one of the businesses -- businesses -- one of the entities might have not had a bank account because we didn't have one for every entity. That, I knew.

Q. Right. The entity that did not have a bank account was HM Four; isn't that right?

A. Could have been. HM Four is the company that does the CAM, basically.

Q. That's the company that's the owner -- WAPD, your company, has a 48 percent interest in HM Four, correct? And HM Four has a 99 percent interest in HM-UP Development Alafaya Trails; isn't that right?

A. That's correct.

Q. So HM Four is this company in the middle. An owner that -- HM Four is owned partially by you and Mr. Sheppard. And then that entity, HM Four, then owns HM-UP Development Alafaya Trails. The company that did not have a bank account until 2020 was HM Four; isn't that right?

MR. ETRA: Objection, Your Honor. Very compound question with --

THE COURT: Does the witness understand the question?

THE WITNESS: (No verbal response.)

THE COURT: All right. Let's break it down. Sustained.

BY MS. MARTINEZ:

Q. HM Four is the company that did not previously have a bank account; isn't that right?

A. I'm not a hundred percent sure.

Q. So you don't know one way or another whether HM Four has a bank account?

A. No. I don't get involved in the day-to-day runnings of that company. Eric's the managing member. I've never had an issue. He's ran the company. I know we have multiple, multiple entities. There's bank accounts for some. We collect rent, we pay the vendors, and we run the shopping center.

Q. So are you aware -- so you're not aware then, right, that on November 23rd, 2020 -- remember we had -- let me strike that.

Remember we had just talked about -- we've already talked about the fact that there was a PPP loan May 1st, 2020, to HM-UP Development Alafaya Trails. And you did not know about that one, correct?

A. No.

Q. Okay. Then we talked about the fact that you did know about the Economic Injury Disaster Loan to HM-UP Development Alafaya Trails that was funded September 2020, correct?

A. My understanding was that was an SBA loan.

Q. Right. It is.

A. That's the one I spoke to the woman for the two minutes on the phone briefly. That was the loan.

Q. So following that, are you aware that after that loan was funded for HM-UP Development Alafaya Trails, Economic Injury Disaster Loan, on November 23rd, 2020, there was another loan funded, Economic Injury Disaster Loan, on behalf of HM Four? Did you know that?

A. No.

Q. And the amount -- are you learning that here today for the first time?

A. You're quoting specific amounts on specific days. I don't have the knowledge of -- I am not there every day. I am not actively participating in the management. Eric is the managing member. He has my full support and authority to run the business on a normal course on a daily basis.

Q. Okay. Let's take back the specific date and the specific amount. You have a 48 percent interest in HM Four. Did you know that Mr. Sheppard was successful in getting funding from the SBA for HM Four, in addition to getting funding from the SBA for the Economic Injury Disaster Loan that he did tell you about? Were you aware that two months later he got funding for your other company, HM Four?

A. I knew he was applying to different programs and trying to apply for different programs. I had even had a conversation with Jeff Graff before he left.

Q. Now -- right. Jeff Graff left in 2020 -- early 2020; isn't that right?

A. I think he left right before -- right before the pandemic really started.

Q. Right. So I'm just going to focus you on after -- there's a loan that you are aware of that -- because at least there was a phone call. So there's a loan that at least you're aware of on behalf of your company that was funded September 2020. I'm just asking: Were you aware that just two months later Mr. Sheppard was successful, he did obtain another identical loan for your other company, HM Four? Did you know that, that he got funding two months later? Did you know that?

MR. ETRA: Asked and answered, Your Honor.

THE COURT: Overruled.

THE WITNESS: Again, I wasn't aware of that.

BY MS. MARTINEZ:
Q. Are you learning that here for the first time today?
A. You're giving me specific information.
Q. About how much funding he got under companies in your name. Are you learning that today for the first time?
A. Again, I knew he applied for different programs. And I know that the -- we got the -- I refer to it as the SBA loan. And then, if other ones came in after that, that's fine. That's the normal course of business. He doesn't call me up every day to tell me what happens on a daily basis. That's not how it works.
Q. Now, let's just finish going through the loans. In addition, are you aware that in March of 2021, on behalf of your company that you own 48 percent, HM-UP Development Alafaya Trails -- March 2021, Mr. Sheppard also obtained $148,397, now for a PPP loan from Northeast Bank? Were you aware of that funding, $148,397 on behalf of your company that was an application made -- successful funding? Did you know that?
A. No.
Q. Did you -- are you aware that -- are you aware that he also sought forgiveness for the first PPP loan that he obtained on May 1st, 2021 -- I'm sorry -- May 1st, 2020, for your company HM-UP Development Alafaya Trails?
A. No. But I would expect him to try and get the forgiveness, just like every -- you know, I did for my own company.

Q. You would expect him to do that only if he did the right thing, correct?
A. Why would I expect he didn't do the right thing?
Q. Are you aware that false documents were submitted on behalf of that forgiveness application?
A. I have no knowledge that there's false documents.
MR. ETRA: Objection, Your Honor.
THE COURT: The objection is sustained.
BY MS. MARTINEZ:
Q. Were you aware that during the pandemic money was being used from the One Florida Bank loan that -- the personal loan that you obtained with Mr. Sheppard, were you aware that money was being taken from that, over 200,000, into the accounts that Mr. Sheppard had signatory authority and that were being used during the pandemic? Were you aware of that, that the One Florida loan was actually taking draws?
A. Yes. We were using that money to do the -- to fund the construction.
Q. And were you aware that from the accounts into which the PPP loans and the Economic Injury Disaster Loans were deposited -- from those accounts, money was going out to then pay your personal loan at One Florida Bank? Were you aware of that?
A. I have no knowledge of the bank accounts, of what comes in and what goes out.

Q. Are you aware that during the pandemic after Mr. Sheppard received funding of PPP and Economic Injury Loans, Mr. Sheppard was using his bank accounts to pay some of the personal line that you had taken jointly at One Florida Bank? Isn't that right?

A. No. My understanding -- that loan was paid back in full. And --

Q. When?

MR. ETRA: She's not letting him answer.

THE COURT: If you'll let the witness answer the question.

THE WITNESS: Thank you.

THE COURT: Complete your answer, Mr. Kallman.

THE WITNESS: My understanding was that that money came from Mr. Sheppard, some of his personal funds, to pay off One Florida Bank.

BY MS. MARTINEZ:

Q. So you're not aware of how -- from Mr. Sheppard's bank accounts that received PPP and Economic Injury money -- you're not aware of how money went out from those accounts to pay your personal loan? You're not aware of that?

A. No.

Q. Mr. Kallman, you're aware that recently in 2023, about May 2023, there was a foreclosure as filed by a bank against you and Mr. Sheppard relating to the Alafaya property in

Orlando?

MR. ETRA: Your Honor, beyond the scope, and I don't know --

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. You have an interest in not losing your investment with Mr. Sheppard; isn't that correct?

A. I have an interest in not losing any of my investments.

MS. MARTINEZ: I have no further questions, Your Honor.

THE COURT: All right. Any redirect?

MR. ETRA: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. ETRA:

Q. I think you -- Mr. Kallman, I think you testified you did not discuss with Mr. Sheppard who of the workers at the construction -- on HM's -- in his companies, whether they were W-2 or 1099. Did you say that?

A. That's correct. I knew he had workers. I knew there was people there. The work was getting done. It didn't get done by magic. But I never questioned him as to what's the classification of somebody working for us.

Q. And if you had questions on that subject, who would you speak to?

A. Excuse me?

Q. If you had questions on that subject, who would you speak to?
A. It would be odd for me to even ask that, but I guess it would probably be -- I don't know -- Jeanette or Jeff.
Q. Why not Mr. Sheppard for answers about that?
A. Because he probably wouldn't even know.
Q. Well, you said that -- I think that the managing member decides who's a 1099 or a W-2. Do you recall saying that?
A. I never said the managing member decides that.
Q. Do you know who in the organization decides who's a W-2 or a 1099?
A. I wouldn't have any idea.
Q. Okay. So you're not saying that Mr. Sheppard personally made any of those decisions?
A. No. I wouldn't know.
Q. How about you with your business? Do you personally make decisions with all your workers --
MS. MARTINEZ: Objection. Relevance.
THE COURT: Overruled -- oh. In his business. The objection is sustained.
BY MR. ETRA:
Q. I want to go back to the driver's license issue. When did you provide your driver's license to Mr. Sheppard's companies?
A. He's had it for a while.
Q. When you say: "A while," could you give me any kind of

ballpark?

A. Probably a couple of years.

Q. Okay. And why did you provide the driver's license?

A. Because in normal course of business, if Eric -- you know, we're always looking to possibly, you know, refinance a loan or a new opportunity will come up. And you have to obviously submit applications and/or, you know, documents to banks and lenders. And that's standard practice to have these sponsors or the ownership group -- they want to know who they're potentially lending to and who you are, so they run a background check.

So my own CFO of my own company holds my license and my passport because it's just more convenient. I can't be -- every time we do something to have to keep resending the same document time and time again.

Q. You were asked about your knowledge of a specific loan from PayPal/WebBank funded in May 1. It was actually applied for in April of 2020. In April of 2020, were you spending time talking to Mr. Sheppard about the HM companies?

A. No. In April of 2020 I was in the either -- coming out of the hospital and recovering at home for over a month. I wasn't discussing much with anybody.

Q. And as managing member, did Mr. Sheppard have authority --

MS. MARTINEZ: Objection. Leading.

THE COURT: Sustained.

BY MR. ETRA:
Q. What authority did Mr. Sheppard as managing member have with respect to government loans?
A. Mr. Sheppard had the authority to conduct business for the company. And if he thought that there was a program or an avenue that could benefit the company, he as the manager should pursue it.
Q. Did he have an obligation to get your permission?
A. No.
Q. Did he have -- did he have an obligation to keep you informed of that?
A. He would -- Eric would always tell me what was going on on a high level, not on a nitty-gritty detail level.
Q. Did he have an obligation to tell you about each application and each funding?
A. No.
Q. Do you feel, from listening to the cross-examination and the information suggested to you by the prosecutor --
MS. MARTINEZ: Objection to his feelings, Your Honor.
THE COURT: Sustained.
BY MR. ETRA:
Q. Are you concerned that Mr. Sheppard has hidden information from you based on the questions from the prosecutor?
MS. MARTINEZ: Leading.
THE WITNESS: No.

THE COURT: Overruled.

BY MR. ETRA:

Q. Why not? Why aren't you concerned based on what the prosecutor was suggesting to you? Do you feel like -- why do you feel that way?

A. Several reasons. One, I've had a long-term relationship with Eric, over 20-something years. There has never been a question of monies or anything like that. The money -- a ton of money went into this project, millions and millions of dollars of our own capital. Eric was under very, very trying circumstances. It's easy now to sit here and say: "Well, this, well, that."

During the pandemic, when everybody was locked in the house, the world shut down, okay, we had terrible timing. We had to deliver this Burlington to be complete under the most arduous circumstances possible to have to do that. And Mr. Sheppard did get the job done. Was there problems after? Yes, there was problems, but ultimately he got the job done.

Q. Let me ask you about your knowledge of -- staying on loans for a moment, do you know what a 4506-T form is?

MS. MARTINEZ: Objection. Beyond the scope of cross.

MR. ETRA: Your Honor, it's within the scope of authority given on the loans, and that's why --

THE COURT: Then rephrase it. The objection is sustained.

BY MR. ETRA:

Q. Okay. Did Mr. Sheppard have authority to fill out 4506-T forms for you?

A. Yes.

Q. And generally, do you know what a 4506-T form is?

A. Yes.

Q. Generally, what is your general understanding?

A. A 4560-T [sic] is where you're -- a bank has the right -- or a lender or an institution has the right to pull your credit reports, get personal information. They use that information to evaluate whether to make a loan or not.

Q. And why would you give that authority --

MS. MARTINEZ: Objection, Your Honor. This is completely beyond the scope of cross and what was allowed on cross.

MR. ETRA: It's --

THE COURT: Sustained.

BY MR. ETRA:

Q. So let's talk about your knowledge of bank accounts or not knowledge of bank accounts. And -- what was your -- as the investor of 48 percent interest, what was your level of focus on which bank accounts were used?

A. Not much.

Q. What was your level of focus on whether Company A -- if one of the companies needed to put a deposit, which bank account was used? Was that something that you were concerned about?

A. No.

Q. Why?

A. It's not really relevant. Because in the real estate business you could have a deposit from one company, then you close out of another company. It's -- the money is all -- it's a pool to a certain degree. I mean, you keep stuff separate for business reasons, but you keep the bank accounts...

Q. When you were asked about knowledge of whether government money was taken out and used for personal expenses, do you recall that?

MS. MARTINEZ: Objection. Misstating my question.

THE COURT: Overruled. I'll allow it.

THE WITNESS: Could you repeat that, please.

BY MR. ETRA:

Q. You were asked whether -- your knowledge of whether government money was put into a corporate account, business accounts, and then taken out for personal expenses. Do you recall that?

MS. MARTINEZ: Objection, Your Honor. I did not say anything about personal expenses.

THE COURT: All right. With regard to personal. But you may ask the question. If he recalls.

Overruled.

BY MR. ETRA:
Q. Do you recall that? Your memory is your memory.
A. That money was taken out of the --
Q. Well, the question is: Do you recall being asked that on cross about whether money was being taken out for personal purposes?
A. (No verbal response.)
Q. I'll take that as a no.
A. I don't think it was said: "Personal purposes."
Q. Let me take a step back.
The -- who paid off the -- did you say that the One Florida account was fully paid off?
A. The loan was fully paid off.
Q. And who paid that off?
A. Mr. Sheppard.
Q. And there was a suggestion that money partially came from the bank accounts of the company. Do you recall being asked about that?
A. I recall being asked about that.
Q. Does that affect your view whether, in fact, Mr. Sheppard paid off the money -- paid it off with his own money?
MS. MARTINEZ: Objection. I have no time frame of this payoff.
THE COURT: All right. Sustained.

MR. ETRA: It was whatever she was asking about --

THE COURT: Let's ask the question with some clarification.

BY MR. ETRA:

Q. Okay. Mr. Kallman, does the -- again, you recall being asked about money going from a bank account -- from one of the company accounts to pay back at least part of the One Florida Bank loan? Do you recall being asked about that?

A. Yes.

Q. Okay. Does that affect your view that that -- that the money was paid back with personal funds?

A. My belief is Mr. Sheppard paid that back with his own personal funds.

Q. From your experience, do you have knowledge even pre-COVID whether money was used -- whether the business accounts were used to pay personal expenses and --

MS. MARTINEZ: Objection, beyond the scope.

THE COURT: Sustained.

(Pause in proceedings.)

THE COURT: Any further redirect?

MR. ETRA: Yes, Your Honor.

BY MR. ETRA:

Q. The Basis loan -- well, sorry. Do you know the name of the loan that was about $20 million?

A. Basis Capital.

Q. Okay. Do you know if that's been paid back?
A. That was paid back in full.
Q. And --
MS. MARTINEZ: Objection. Vagueness as to the time frame.
THE COURT: All right. The testimony has already been presented. Let's continue.
BY MR. ETRA:
Q. Okay. With respect to the property -- presently, right, with respect to the project, what is the status of your investments at the project?
A. Clarify "status," please.
Q. In terms of whether you're still doing active construction or the properties are stabilized.
A. The property is 99 percent stabilized. We're just finishing a little bit of construction on the last outparcel, which is a Starbucks, 2,400 square feet.
Q. How significant is -- so what kind of services are required essentially to keep the project going for your investment?
MS. MARTINEZ: Objection. Relevance.
THE COURT: Sustained.
MR. ETRA: Your Honor --
THE COURT: The objection is sustained.
MR. ETRA: -- bias.
THE COURT: You may continue.

BY MR. ETRA:
Q. Do you have any interest in phase 3?
A. No.
(Pause in proceedings.)
MR. ETRA: Could -- Your Honor, could I show the witness a document on ELMO, but only for the witness?
THE COURT: All right. What's the exhibit number?
MS. MARTINEZ: I'd like to ask if the witness has seen this before because I was prohibited from showing documents to the witness.
THE COURT: Professional courtesy requires that you show it to Ms. Martinez first. And what is the exhibit number before it's presented to the witness?
(Pause in proceedings.)
MR. CAVALLO: Your Honor, this will be Defendant's Z-23.
THE COURT: Thank you.
MS. MARTINEZ: I have no objection to him asking about it --
THE COURT: All right. Then for the witness only.
MS. MARTINEZ: I do have an objection to him putting it in because I was not provided that before.
THE COURT: Is this the first time that this is being shown?
MR. ETRA: Yes, Your Honor.

THE COURT: Well, then --

MR. ETRA: This is one page.

THE COURT: Yeah. I understand, but this is your witness. So the objection is sustained.

MR. ETRA: Could I just have a moment to confer with counsel?

THE COURT: All right.

(Pause in proceedings.)

BY MR. ETRA:

Q. Do you know if the -- any bank loan with Chase Bank was paid off as well?

MS. MARTINEZ: Objection. Beyond the scope.

THE COURT: Sustained.

MR. ETRA: No further questions, Your Honor.

THE COURT: All right. Thank you.

Is Mr. Kallman excused? On behalf of the Government?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: On behalf of the Defendant?

MS. WEINTRAUB: Yes, Your Honor.

THE COURT: Thank you, sir. You are excused.

(Witness excused.)

THE COURT: And the Defendant's next witness.

MR. CAVALLO: Your Honor, our next witness is our computer forensic expert, John Jorgensen.

(Pause in proceedings.)

MS. WEINTRAUB: Judge, I apologize. He just went to the men's room.

THE COURT: Do you have another witness to call?

(Pause in proceedings.)

MR. ETRA: Your Honor, he was in the other end, and he walks with a cane, so --

THE COURT: All right. Not a problem.

(Pause in proceedings.)

THE COURT: All right. Good morning, sir.

THE WITNESS: Good morning, Your Honor.

THE COURT: Sir, let me ask that you remain standing, raise your right hand to be placed under oath.

JOHN JORGENSEN, DEFENSE WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

You can have a seat.

Would you please state your name and also spell it for the record.

THE WITNESS: John Jorgensen. J-O-H-N J-O-R-G-E-N-S-E-N.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. CAVALLO:

Q. Good morning, Mr. Jorgensen.

A. Good morning.

Q. Where are you employed?

A. I'm employed at the Sylint Group, S-Y-L-I-N-T, in Sarasota, Florida.

Q. What's your position with the Sylint Group?

A. CEO, president, and chairman.

Q. Could you just briefly tell us a little bit about your company.

A. I'm also the senior forensic engineer at the company. The company is composed of approximately 49 people right now. We have multiple offices, one in Tallahassee and another one in Pennsylvania. And we do digital data analysis forensics and we do cybersecurity. We write our own software as well.

Q. Typically, what's the background of the types of people you hire?

A. Typically, they are ex-military, ex-law enforcement, FBI agents, CIA agents, various people like that.

Q. And what's your personal area of expertise?

A. I joined the military back in '69, the Army Security Agency during the Vietnam War.

Q. Did you leave college to join the military?

A. Yes, I did. I originally went to college for mathematics, and I got stuck in the chemical engineering program, and I hated it and I joined the military for NSA, took some tests. They gave me an option of either the officer candidate school or ASA, Army Security Agency, and I elected the Army Security Agency. It's a four-year enlistment when you do that.

Q. And has all of your work since then involved digital data forensics?

A. Yes, it has. When I was working with the Army Security Agency, that's what we did, a two-year school for digital data forensics. And then I -- the Army Security Agency is the military arm of the National Security Agency. So I was working really for the National Security Agency.

Q. How did your experience at the NSA impact what you're doing now at the Sylint Group?

A. I had a number of very successful programs while I was working at National Security Agency and ASA. And I took the knowledge that I gained there in digital data forensics, and the security issues that we came up against, and I brought that process and capability to Sylint Group, and we turned -- we became very successful in the Sylint Group using that capability and methods.

Q. Does your company and yourself provide services to any government organizations?

A. We provide services to FBI. We provide services to IRS, Department of Homeland Security, Secret Service, various law enforcement agencies throughout the country, and various other government organizations in the intelligence community.

Q. Do you personally hold any security clearances now?

A. Currently, I'm on a "for eyes only" program. Those are very limited programs. Usually there are -- the number of people involved in those programs are 50 or less.

Q. Have you been involved in any government briefings regarding your expertise in digital data analysis and forensics?

A. Oh, many briefings.

Q. With who, for example?

A. We brief Sedona Conference as an example. We sit on the Conference Working Group 11. We used to brief the RSA conferences all the time. We've briefed -- I briefed, personally done, the Secretary of Defense, and various -- well, HPSCI. I've also briefed the House Select Committee on Intelligence. And we've briefed -- at the encouragement of our government, we've briefed other government entities around the world.

Q. Have you ever been formally recognized in your field of expertise?

MS. MARTINEZ: Objection. Vague. What field of expertise?

THE COURT: Sustained.

BY MR. CAVALLO:

Q. Have you ever been formally recognized in the field of digital data forensics and analysis?

A. Yes. I received a Army commendation medal for my work in breaking the SOBE Communication Service system. I received a Joint Service Commendation Medal. I can't talk about that necessarily. But I received the Defense Meritorious Service Medal and a personal presentation from the director of NSA for my work on a signal called M6504.

Q. And how many times approximately have you testified as an expert in digital data analysis and forensics?

A. A couple hundred times.

Q. Have you ever been appointed by the court in any role?

A. Yes. I've been appointed by the court as a special master for federal and local courts.

MS. MARTINEZ: Objection, Your Honor. Vague as appointed to do what, what field of expertise?

THE COURT: He -- you want to clarify the special master?

BY MR. CAVALLO:

Q. Sure. Mr. Jorgensen, have these court appointments you've just told us about -- have they all involved digital data analysis and forensics?

A. Yes. All involving forensics.

MR. CAVALLO: Your Honor, I offer Mr. Jorgensen as an expert in the field of digital data forensics and analysis.

THE COURT: All right.

BY MR. CAVALLO:

Q. Mr. Jorgensen, what were you asked to do in this case?

A. I was asked to look at two documents, actually an email and a Microsoft Word document, and determine what properties and metadata exist for those documents.

Q. Could you just briefly tell us what metadata is.

A. Metadata is information that is attached to a document or a piece of information derived by a computer system application, such as Microsoft Word. And that information is frequently derived from the operating system. And in some cases, as in emails, the information is derived from the communications --

Q. Is this something you're typically asked to do in the field of digital data forensics and analysis?

A. Yes. Frequently we are asked to do that.

MR. CAVALLO: Could you please put up -- it's in evidence -- Defense Exhibit M-19, and we'll turn off the ELMO.

BY MR. CAVALLO:

Q. Do you see this document on your screen?

A. Yes, I do.

Q. Just on the face of this document --

MR. CAVALLO: And could you go to the next page, too, just to scroll through.

BY MR. CAVALLO:

Q. On the face of the two pages of this document, is this the email and the attachment you were asked to look at?

A. What I'm seeing right now -- the email is on the left-hand side, and the attachment is under "Attachments," the Eric.docm attachment. And that's a Microsoft macro document.

Q. I --

MR. CAVALLO: For the record, this is Exhibit M-19.
BY MR. CAVALLO:
Q. Could you tell us what a .docm file is?
A. A docm file is a macro that's typically written by a company in order to provide the -- provide a format and a header information and footer information for a document that you would fill in. So a macro is a pre-derived document template that's used by Microsoft Word.
Q. And what did you need in order to be able to review the metadata of these two documents?
A. The two documents in their native format.
Q. Native format?
A. Yes.
Q. And did you receive the native version of these two documents?
A. Yes, I did.
Q. Did you assist in the preparation of any demonstrative aids in connection with your review of this information?
A. Yes. These demonstrative aids that we have right now.
MR. CAVALLO: Could you put up and just scroll through for the witness Z-19 through Z-22.
You can go to the next one.
BY MR. CAVALLO:
Q. Mr. Jorgensen, I'd just like you to look at these briefly, each one.

A. Yes.
MR. CAVALLO: You can go to the next one.
THE WITNESS: Yes.
MR. CAVALLO: And you can take it down.
MS. MARTINEZ: Excuse me. I just want to make a request. I realize that they are only demonstrative, but when you refer to each one please give me like a number.
MR. CAVALLO: I will. They are separately numbered.
BY MR. CAVALLO:
Q. Mr. Jorgensen, you were -- these demonstratives, they're prepared to assist you in your expert testimony today?
A. Correct.
MR. CAVALLO: Your Honor, I'd like to show these demonstratives to the jury during Mr. Jorgensen's testimony, and the Government has no objection.
THE COURT: For a demonstrative aid. Yes, of course.
MR. CAVALLO: I offer them as demonstrative aids.
Could you -- sorry. Please put up Z-19 first.
BY MR. CAVALLO:
Q. Do you see Z-19 on your screen?
A. Yes, I do.
Q. Could you please tell us what is being shown in the middle of this document.
A. Well, the document is a email -- email document. And what is being shown in the middle of this document is the properties

that are contained within the document, the email.

MR. CAVALLO: And I'm sorry. Actually, could you unzoom in for a second.

THE WITNESS: So this is the metadata that would be associated with this document.

MR. CAVALLO: Okay. Sorry. Could you please --

BY MR. CAVALLO:

Q. And what does the metadata on this specific demonstrative show?

A. If you look under the Internet headings in the center of the document, you see that this email was sent to ericsheppard10@gmail.com. That's the email account it was sent to. And it was received -- next three lines, four lines down -- it was received by that SMT -- @SMTP address on 12 November 2020 at 08:13:39; however, that is in -- the PST means Pacific Standard Time.

Q. Do you have any idea why that would be in Pacific time?

A. Because Google's email server is routed through California. That's where their basic servers are. So this would have gone through that server in California and then back out again, but it would have a tag of Pacific Standard Time on it. So if you convert that to local time, that's three hours' difference. So that would be 11:13:39.

MR. CAVALLO: And just for the record, this is Demonstrative Z-19.

Could you please put up Demonstrative Z-20.

BY MR. CAVALLO:

Q. Do you see this, Mr. Jorgensen?

A. Yes, I do.

Q. Could you please tell us what this is.

A. If you look on the right-hand side of the Internet headers, you see the scroll bar has moved down slightly. So what we're doing is going through the various properties data in this center box.

Q. And what is the metadata that's shown here?

A. This data says received from a corporation with the address suntrust. -- suntrust.com. So the SMTP address is suntrust.com at that IP address.

Q. Okay. Is there any other date information in this metadata?

A. Down on the bottom of it, where it says: "For EricSheppard10@gmail.com," it says: "Thursday, 12 November 2020, 11:13:38." And again, that's local time so there's no conversion of the time.

Q. Given the two times you've seen, it's about a second apart, correct?

A. Right. Correct.

MR. CAVALLO: Could you please put up Demonstrative Z-21.

BY MR. CAVALLO:
Q. You see this demonstrative, Mr. Jorgensen?
A. Correct. And again we've moved down on the scroll bar. So we're looking at more information contained in the metadata for the email. And it says -- it says sender was heimdal.barrios@suntrust.com at that IP address.
Q. Okay.
MR. CAVALLO: And you can leave it up.
BY MR. CAVALLO:
Q. Can you just summarize for us what the metadata in the email showed based on what we've just looked at.
A. It showed that an email was sent by Heimdal Barrios @suntrust.com to Eric Sheppard at that Gmail address that was Eric Sheppard's Gmail address.
Q. Thank you.
MR. CAVALLO: You can take that down. And please put up Z-22 demonstrative.
BY MR. CAVALLO:
Q. Could you tell us what's being shown here, Mr. Jorgensen.
A. This is the profiles and the properties associated with the dot -- the dot M -- the dot com M.
Q. Yeah.
MR. CAVALLO: You know what? Could you put up on the screen half and half also and 19 on the second page.
THE WITNESS: In the email, there was a document that

was an attachment. So this is the attachment on the right-hand side of the screen that went with the email. On the left-hand side of the screen is the properties for that attachment.

BY MR. CAVALLO:

Q. Could you tell us what the metadata of the attachment shows, and specifically related to the dates that are shown there.

A. We've got a created date, a last modified, and a last printed date. So what happened was the created date gets established when the file is saved with a certain file name.

So the file name was saved at -- on 11/12/2020 at 11:12 a.m. It's interesting to note that it was printed just before it was saved. So the document was probably up on the computer screen, which is not unusual, and the individual decided that he wanted to print it. And so the actual printing of the document occurs one minute before the document gets assigned its name.

Q. And what's the significance of the created date and the last modified date being identical?

A. Well, no other further modifications had been made. It will give a last modified date the same date as the created date if there's no modifications made.

Q. And who was -- according to metadata, who last modified this email attachment?

A. It was Heimdal Barrios with the email address. If you

click on that "B," you would see the full email address, but it's -- it was Heimdal Barrios.
Q. And just for the record, could you please go through and state the various times that are listed here and what those show, for example, the time for last printed.
A. Well, the last print means -- it would be the last date a print command for this document was sent to a printer.
Q. And the time listed there, for the record?
A. Well, it's 11:11 a.m. So the individual that was sitting on the document, reviewing the document on his computer screen, issued a print command prior to him saving the document.
Q. Sorry. The date and the time. So I would just like you to --
MS. MARTINEZ: Objection, Your Honor. He's already answered the question, and it's on the document.
THE COURT: Overruled.
THE WITNESS: So the time indicated was 11/12/2020 at 11:11 a.m.
BY MR. CAVALLO:
Q. And that was for?
A. The printing.
Q. Okay. Next?
A. And the created date was 11/12/2020 at 11:12 a.m.
Q. And the last modified?
A. And last modified date was the same, 11/12/2020 at

11:12 a.m.

MR. CAVALLO: On M-19 on the right-hand side, could you just go up one page.

BY MR. CAVALLO:

Q. And again, just for the record, the metadata that you reviewed on the left-hand side was for which document?

A. It's for the attachment, which was named Eric.docm.

Q. Is there any evidence in the metadata that Mr. Sheppard ever modified or altered either of these documents?

A. The evidence in the metadata shows that it would be impossible for him to do that.

(Pause in proceedings.)

MR. CAVALLO: I don't have anything further, Your Honor.

THE COURT: All right. Cross-examination -- and actually, Ms. Martinez, before we proceed, only because we have been sitting, Ladies and Gentlemen, how is everybody doing? Do we need a short recess?

All right. My apologies. Since it is a quarter to eleven, let's go ahead and take a 10-minute recess.

COURT SECURITY OFFICER: All rise.

(Jury not present, 10:44 a.m.)

THE COURT: We're on a 10-minute recess.

(Recess from 10:44 a.m. to 10:56 a.m.)

THE COURT: We just need the witness and the

Defendant.

Okay. Welcome back. We just need Mr. Sheppard.

All right. Let me acknowledge the presence of the Defendant.

Can we just make sure we have all of the jurors before we bring them in.

(Pause in proceedings.)

(Before the Jury, 10:56 a.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

And we will continue with the testimony.

CROSS-EXAMINATION

BY MS. MARTINEZ:

Q. Good morning, Mr. Jorgensen.
A. Good morning.
Q. My name is Annie Martinez. We've never met before, right?
A. Not that I know of. Right.
Q. So I do see your resume. Your education was originally in chemical engineering; is that right?
A. Yes. But I went to Northeastern for math, but the math department was full so I ended up in chemical engineering.
Q. So you studied chemical engineering from 1966 to 1967; is that correct?
A. Correct.

Q. And I see your experience. Your resume describes it as happening prior to July 1994. That's where your resume describes your experience; is that right?
A. That's correct.
Q. So since 1994, you began founding your company and running it as a business?
A. Correct.
Q. You described in your direct testimony that you had had a two-year school in digital data forensics. I didn't get the time period.
A. So the -- I joined the military delayed entry. Entered the military in '69, and I went to basic training. And then I went to Fort Devens, Massachusetts for two years and went to school for digital data signals analysis.
Q. And I think you -- so this is signals analysis, like -- for example, like foreign intelligence?
A. Any communications that's done with digital data. It can be from -- as an example, it can be from missiles. It can be from satellites. It can be communications on the ground. It's usually signals that are -- since digital data is being used by computers, it's signals that are single data paths that are used by computers. So this is in the early days of looking at a signal and determining where the signal had came from, what it was made up of, and what type of computer systems were transmitting the signal.

That was the beginning of my career. After that two years, I was assigned to Shemya, Alaska, which is a three-by-four mile island on the end of the Aleutian chain. We used to watch the ICBM missiles come into the peninsula and analyze the signals emitted from those missiles, from those warheads, and determine how they derive -- what the structure is, how we could overcome the commands being sent to those missiles.

And then I went back to Fort Devens. I taught at Fort Devens for a year, and then I --

Q. Would you mind if I just pause you, only just because I think I just want to focus you just on the two years of school in digital data forensics. I think, if I got it right, that would be in the late '60s when you did that?

A. No.

Q. Early 70s?

A. In the late 60s, that's when I began my career. After I came back and came back to NSA, I went to 12, 15 schools in digital data forensics during the '80s -- '70s and '80s.

Q. So -- okay. So it was not two years of school in digital data forensics?

A. No. Much more than that.

Q. Okay. When was the last time that you had education in digital data forensics, yourself -- like yourself, your training?

A. We're on the cutting edge of that.
Q. No. My question is you, sir.
A. So we are doing the teaching.
MR. CAVALLO: Objection, Your Honor. Let him finish, please.
THE WITNESS: We're doing the teaching at the RSA conference. We hold classes on it for the government --
BY MS. MARTINEZ:
Q. May I ask who's -- let me just please ask you -- my only question is: When was the last time you personally got schooling on digital data forensics, yourself? You yourself, not your employees.
A. We develop the classes and we teach digital data forensics. So we don't go to school for it because we are teaching it. We are on the cutting edge of it.
Q. So when -- I understand that you work as a group with people, but my question relates to you. Have you yourself received any training regarding digital data forensics in the last 10 years, yourself? Yourself. Have you?
A. I have attended RSA conferences on digital data forensics.
Q. What is RSA?
A. RSA is a company that holds conferences on legal matters, as well as forensics, as well as cybersecurity. The conferences are held in Asia once a year, they're held in the United States once a year, and they're held in the Netherlands.

And I have spoken at those conferences and I've attended classes in those conferences.

Q. Have you had training in obtaining emails from an environment such that it's not modified?

A. Yes.

Q. And when was the last time you did it yourself?

A. Yes.

Q. When was the last time you did it yourself?

MR. CAVALLO: Your Honor, just clarification. Did what?

BY MS. MARTINEZ:

Q. When was the last time you obtained an email from its original environment yourself?

A. Saturday and Sunday.

Q. Okay. So you know that the best practice to obtain an email is from the original environment, such as the Google mailbox? You know that, correct?

A. No, it's not.

Q. The original environment -- have you ever worked on a criminal case?

A. Yes. Several times.

Q. And --

A. Couple hundred times.

Q. And have you obtained evidence from a Google environment?

A. Yes.

Q. And that is the best place to obtain it from, correct?
A. No, it's not.
Q. What would you say is the best place to obtain an email in its original form so that you can be sure that it has not been modified?
A. You would get it from the native -- in its native form from the computer that transmitted it.
Q. Okay. That's another good place to go. Did you go to the computer that had the email message that you are testifying to the jury about?
A. It was not necessary because it was in its native format. The nature format -- if it's in its native format, the native format stays as a whole from the moment of transmission to the moment of the reception.
Q. You are not aware of the fact that a message file can be modified if it's removed from its environment? If it's outside --
A. How? How?
Q. I ask the questions, sir. I do. You're not aware? Are you aware of the hex editor?
A. Pardon me. You are not describing it properly.
Q. Thank you, sir. Let's go to the basics. A computer files is zeros and ones, correct?
A. Correct. Assembly language. I used to program in Assembly language.

Q. And that's what the machine reads, correct?
A. Correct.
Q. And that can be changed; isn't that right?
A. I'd fire you or anybody even with a computer understanding to be able to change at the hexadecimal level.
Q. Isn't it true that the only way to be sure that something hasn't been modified is to obtain it from its original environment and to do it forensically applying science, so that it can't be changed?
A. A native file cannot be changed. That's why you ask for native format. That's why native format is important in any discovery process.
Q. So are you -- you've testified in other cases, correct?
A. Two hundred of them, yes.
Q. Okay. And are you aware of the concern of preserving data in its original form?
A. Yes. I make that a subject of all of my cases.
Q. And isn't it a fact that the only way to obtain that in its original form is to go to the source, such as the computer or the Gmail account?
A. No.
MR. CAVALLO: Objection, Your Honor. Asked and answered.
THE WITNESS: No.
THE COURT: Overruled.

BY MS. MARTINEZ:
Q. You're not familiar with a hexadecimal editor that can be downloaded for free from the Internet and that allows you to modify an MSG file, a message file, once it's removed from a computer and held statically outside of its environment? You're not aware of that?
A. The properties of that file are very, very difficult to change. We used to do it when we were hunting terrorists in NSA. We would change files. It is extremely -- it would take me a month to take and compose that and get the computers necessary and pool them all together. I'd have to have the computer that is referenced. I'd have to take and reprogram them. I'd have to put a different time zone on them. I'd have to -- in order to take and get around the properties that are contained in the metadata.
To change an email, the face of the email, the body of the email, yes, you can do that, but you can't change the properties. And that's the important issue, is looking at the properties of the email in defining whether those properties are valid or not, and I did that.
Q. Right. But once you remove it from the original environment, you can re-save it, open it up, use a hexadecimal editor, and change the properties.
MR. CAVALLO: Objection, Your Honor. Asked and answered.

THE WITNESS: No, you can't. You cannot change the properties.

THE COURT: Sustained. Sustained. There's no need to answer the question, sir. The objection is sustained.

BY MS. MARTINEZ:

Q. Would you agree with me that it is the correct practice to obtain it from the original source -- to obtain an email from its original source, not for it to be handed to you by a lawyer in a static format outside of its environment?

A. If the email is in its native format -- and I can tell an email in its native format fairly easily by looking at the properties. If it's in its native format, you can use the email in its native format. It's a container that cannot be corrupted --

Q. So --

A. -- without leaving telltale signs behind.

Q. Did you use any science in this case to determine whether or not there was those telltale times -- those telltale signs?

A. I looked at the properties values for the email, and they were correct. They were valid.

Q. Isn't it true that the only way to make sure that it hasn't been changed is to get it from its original source?

MR. CAVALLO: Objection, Your Honor. Asked and answered.

THE WITNESS: As I said many times --

THE COURT: The objection is sustained. There's no need to respond.

THE WITNESS: Yes, Your Honor.

BY MS. MARTINEZ:

Q. You're familiar with the fact that in modern times email are faked all the time, to the fact that part of your cybersecurity practice includes training people on how to beware of spoofed emails. Emails can be faked; isn't that true?

A. Yes. But you're talking about two different things. You don't know what you're talking about. Would you like me to explain to you what it is?

Q. No, sir. You'll have an opportunity to redirect. You're not familiar with the fact that an MSG file that has been removed from its environment can be changed, right?

A. The body can be changed -- you're asking the question incorrectly -- but the properties in a native file cannot be changed.

Q. Going to the Microsoft Word file. You're familiar with the fact that now Microsoft Word allows you to change the metadata so that it doesn't leave when you send it out?

A. Microsoft Word allows you to change the displayed data in properties. It does not allow you to change the metadata that accompanies the file. If you look at the metadata that accompanies the file, you can see if there are any changes that

have occurred and you can detect them. We do it all the time.
Q. Well, actually, the only thing you did in this case, right, is that you just did some right-clicking and saw what you could see superficially. You did not apply any science in this case; isn't that right?
A. Are you asking me if I did or are you telling me?
Q. I'm asking you.
A. We used -- I used X-Ways, which is a forensics program, to validate the metadata and validate the properties of a file.
Q. Validate by opening it?
A. No. You validate it by collecting information about the file itself in its native format.
Q. And those properties, you were not able to say whether it was modified previously?
A. I'm able to say that they were not modified.
Q. In the civil litigation that you were involved in, you're aware of the emphasis of preserving evidence in its original form and not altering, right? You're familiar with that?
MR. CAVALLO: Objection, Your Honor. Asked and answered.
THE COURT: Overruled. I'll allow it.
THE WITNESS: Yes.
BY MS. MARTINEZ:
Q. You're familiar with the fact that forensic analysts talk about the fact of going to the source, making sure that they

obtain it from the source, and explain how they are sure that it has not been changed. You're aware of that. You do that as part of your job, right?
A. Some of my cases are written up in Westlaw on spoliation issues and on original evidence issues because of established precedence. In both cases I've addressed the issue of original evidence and maintaining and preserving evidence and how you would go about doing it.
Q. Right. And isn't it the best practice to go about doing that to not touch the original environment and to have a professional go and remove the emails from there to make sure that it hasn't been modified? Isn't that the best practice?
A. Not necessarily if you have native format and you can take and look at -- forensically look at the metadata and you can validate the data on the original -- on the native format document that you're looking at.
Q. You're saying that it's not the best practice?
MR. CAVALLO: Objection, Your Honor. Asked and answered.
THE COURT: Sustained.
(Pause in proceedings.)
BY MS. MARTINEZ:
Q. You're aware of litigation regarding metadata being changed, aren't you?
A. Yes.

Q. Okay. So it can be changed?

A. You're talking about the properties values. And you're not talking about -- I am aware that people have attempted to change metadata. It leaves all sorts of artifacts behind when you attempt to change metadata.

Q. And you did not do an examination like that in this case?

A. I said I used a forensics program X-Ways, and I validated the properties values and I validated the metadata that I could see using X-Ways. Yes, I did it in this case.

Q. In this case, what you reviewed is an email that was provided to you by counsel, correct?

A. Yes. In its native format.

Q. Right. You never went to the Defendant's computer, right? You never went to Mr. Sheppard's computer; is that right?

A. That wouldn't be the place to go to.

Q. Excuse me?

A. It would not be the place to go to. It was not the originator of the email.

Q. You did not go there?

A. No.

Q. Did you take a look -- I'm going to show you a document.

(Pause in proceedings.)

MS. MARTINEZ: Could I have ELMO, please.

Oh. It's up.

Is that what's wrong?

BY MS. MARTINEZ:
Q. I'm showing you what's been marked as Government's Exhibit -- I'm sorry -- Defense Exhibit M-19.
A. Okay.
Q. Okay. You've seen this document, right?
A. Yes.
Q. And you do see that it says: "On behalf of Heimdal Barrios." Do you see that at the top?
A. It says -- it gives the email address, yeah.
Q. Do you see that it says: "On behalf of Heimdal Barrios"?
A. It says: "Heimdal Barrios, on behalf of Heimdal Barrios."
Q. That's right. And you're aware that if it's coming from the mailbox of Heimdal Barrios, it wouldn't say: "On behalf of Heimdal Barrios"; is that right?
A. No. It would.
Q. It would not.
A. It would say exactly what it says if it came from Heimdal Barrios's --
Q. Actually -- actually --
A. -- mailbox.
Q. -- if it came from Heimdal Barrios's mailbox, it would say: "Heimdal Barrios." It wouldn't say: "On behalf of"; is that right?
A. Depends upon how their email system is set up.
Q. You're not familiar with Microsoft Outlook feature --

A. Yes, I am. And it depends upon how the system is set up, how the company's Microsoft Outlook system -- email system is established.

Q. Are you familiar with the feature that allows for someone else to go into a mailbox and send on behalf of someone else?

A. Yes. So Heimdal Barrios is sending it on his behalf.

Q. Are you familiar with the feature that allows, for example, a secretary to send on somebody's behalf?

MR. CAVALLO: Objection, Your Honor. Asked and answered.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. I'm going to show you part of the Exhibit M-19. This is a hard copy of the attachment that you reviewed.

A. Yes.

Q. Do you recall reviewing that?

A. I said yes.

Q. I'm showing you what's been previously identified as 58-3 and it's also identified as Bates label 031143 from Exhibit 58.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. Did you analyze --

MR. CAVALLO: Your Honor, I'm just going to object that this document is outside the scope of direct and what was discussed yesterday regarding the scope of this expert's testimony.

THE COURT: Is this the same --

MS. MARTINEZ: This is an exhibit in this case.

THE COURT: All right. But this is part of the document that was used for demonstrative purposes?

MS. MARTINEZ: No, Your Honor.

MR. CAVALLO: No, Your Honor.

MS. MARTINEZ: This is the document at issue in this case.

THE COURT: I'm going to allow it. Overruled.

BY MS. MARTINEZ:

Q. Has the Defense shown to you this document that has a signature?

A. I've seen this document, yes.

Q. Were you given this document in PDF format to analyze the PDF?

A. Do you know that PDF format --

Q. Just answer the question.

A. I have not seen this document in PDF format. I've not, I believe.

Q. You did not analyze a document of PDF?

A. I saw a PDF document. It is not a valid document.

Q. You did -- so you did receive a PDF?

A. It's not valid. It's not valid because it was --

Q. Just answer my question, please.

MS. WEINTRAUB: Your Honor, can he be allowed to answer?

THE COURT: Yeah. Give the witness an opportunity to respond to the question.

MS. MARTINEZ: Well, the question calls for a yes or no.

BY MS. MARTINEZ:

Q. Did you receive a PDF to review?

A. I did not receive a PDF to review. I saw the PDF document. I was not asked to review the document. It's not valid.

Q. You viewed it on somebody else's computer? I'm trying to understand. You didn't receive it.

A. I received the PDF document. I did not review it for counsel; however, I did see the document, and I noted that there was a PDF. The PDF document that I received -- oh. The PDF document I received was not valid. The reason why it was not valid, it was not in its native format as a container, and it had a date on it that was the same date as other documents that was transmitted by prosecution.

So you destroyed the properties of that document when you PDFed it. I would have to go to the prosecution and say: "I need to see this document on prosecution's computers because you have destroyed the evidence by PDFing it and changing the dates."

Q. Mr. Jorgensen, you did not ask anyone for a PDF in its

original format, how it was received from the SBA. You did not ask for that, correct? You did not ask for that?
A. Why should I ask for a document that I know is not valid?
Q. Well --
A. I was not asked --
Q. You don't know what the SBA has unless you ask.
A. I was not asked to review this document.
Q. And with respect to your statement with respect to information on a document, these documents were Bates labeled when they were provided. So that may be what you're addressing with respect to the document that you saw; however, if the document in the case is a PDF, you did not ask for it, correct?
A. I was not asked to review it.
Q. Okay.
A. And when I did look at it, I realized the document properties had been destroyed in the prosecution's handling of the document.
Q. You did not -- now, because you make that statement, I have to ask you: You did not ask us whether we had another copy that came from the SBA. You did not ask that, did you?
MR. CAVALLO: Objection, Your Honor. Asked and answered.
THE COURT: Sustained.
BY MS. MARTINEZ:
Q. Taking a look at this document, you do see that the PDF is

formatted differently than the letter. You see that?
A. And I would imagine -- yes, I do. And I would imagine that the reason why it is formatted differently here is because there were two spaces that were removed. And I would imagine that Mr. Barrios may very well have removed those spaces himself when he went to print the document. If you remove those two spaces, the whole document closes up and it looks exactly like this document. It's the same font, same spacing, everything's the same. I measured everything on the document. It's the same.
Q. Let me take you back to the document and the metadata, the Word document. When it says: "Heimdal Barrios" there, what it really is saying is that there was -- if the metadata is true, what it really is saying is that it's Heimdal Barrios -- a computer where Heimdal Barrios was assigned and signed in as Heimdal Barrios. That's really what it's saying. It's not saying who was sitting at the computer; is that right?
A. No. You're wrong.
Q. You know who is sitting at the computer?
A. You're wrong in your assumption. It gives the computer. The word -- the signature Heimdal Barrios comes from the application and the person that's signed into the application, not the person that's signed into the computer.
Q. Right. So if -- but it doesn't tell you who's sitting there, just who signed in if that metadata is correct, right?

A. So by saying that, you're saying that somebody else signed into his computer at SunTrust and produced the document.

Q. All -- it's on behalf -- it was sent on behalf of Heimdal Barrios. It could be a secretary who sat there. Isn't it true that it could be a secretary who sat there?

A. If she had his login password and name, and she signed in as Heimdal Barrios, then it would be Heimdal Barrios -- sending the email on behalf of Heimdal Barrios.

Q. Now, looking at this document that I have in front of you, you have no idea who signed that document, do you?

A. I'm not a writing expert -- a forensic expert for writing.

Q. Right. And you don't know Mr. Barrios, right?

A. That has nothing to do with whether it's his signature or not.

Q. You -- you were paid to testify here today, weren't you?

A. Yes.

Q. And what is your rate?

A. Four hundred dollars an hour.

Q. And so -- and is that the same rate for your review?

A. No. The rate for the review was 325 an hour.

Q. So everything that you've done in this case -- have you already calculated your hours?

A. No.

Q. So -- but it would include the review, and the review began in December?

A. No. The review began this weekend. I was engaged on Friday, formally engaged on Friday.

Q. The document that you received to review had been saved on December 27th; isn't that right?

A. I don't know what date it was.

Q. You actually didn't check to see the last time that that document that you got, the native document -- when it had been saved? You didn't check that?

A. I do not remember what that date was.

Q. So everything that you have said here today you're going to be paid several thousand dollars for; isn't that right?

A. Correct. That's normal forensics fees.

(Pause in proceedings.)

BY MS. MARTINEZ:

Q. You're aware that the letter was dated November 11th, right?

A. Yes.

Q. Did you see that?

A. 2020.

Q. And being former military, you know that that's Veterans Day, correct?

A. I don't know that offhand, but I will take your word for it.

MS. MARTINEZ: No further questions, Your Honor.

THE COURT: All right. Any redirect?

MR. CAVALLO: Very brief, Your Honor.

REDIRECT EXAMINATION

BY MR. CAVALLO:

Q. Mr. Jorgensen, when you performed forensic work for the government, are you also paid?

A. Yes.

Q. I believe on cross your testimony was if someone had -- when people try to tamper with metadata, ones and zeros and those things you talked about, there would be artifacts left behind?

A. Yes, there are.

Q. And were there any artifacts of anyone trying to tamper with the metadata in the two native documents you reviewed?

A. No, there weren't. If there were, I would have reported it back.

MR. CAVALLO: Nothing further, Your Honor.

THE COURT: All right. Is Mr. Jorgensen excused?

MS. MARTINEZ: Yes, Your Honor.

MR. CAVALLO: Yes, Your Honor.

THE COURT: All right. Thank you, Mr. Jorgensen. You are excused.

THE WITNESS: Thank you, ma'am.

(Witness excused.)

THE COURT: And Members of the Jury, I do want to advise you that at five to twelve we're going to take our one-hour recess for lunch. Unfortunately, I do have a meeting at noon that I must attend. So we'll start with the next witness and see how far we go.

The Defendant's next witness, please.

MR. ETRA: Yeah. Defense calls Kerby Kleef.

THE COURT: Is this Mr. Kleef?

Hi. Good morning, sir. If you'll step forward.

If you'll remain standing. Raise your right hand to be placed under oath.

KERBY KLEEF, DEFENSE WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

Have a seat.

Would you please state your name and also spell it for the record.

THE WITNESS: My name is Kerby Junior Kleef. K-E-R-B-Y. Junior, J-U-N-I-O-R. Kleef, K-L-E-E-F.

COURTROOM DEPUTY: Thank you.

MR. ETRA: May I proceed?

THE COURT: Of course.

DIRECT EXAMINATION

BY MR. ETRA:

Q. Mr. Kleef, good morning.

A. Good morning, sir.

Q. Where were you born?

A. I was born in Haiti.

Q. Where do you live now generally? You don't have to give your address.
A. I live in Orlando.
Q. Are you a United States citizen?
A. Yes.
Q. In COVID, did you work at the Burlington job?
A. Yes.
Q. Who hired you?
A. Jeffrey Vasilas.
Q. Who did you report to when Mr. Vasilas was alive?
A. I report to him.
Q. Who paid you?
A. Jeffrey Vasilas.
Q. Generally speaking, just describe in your own words the kind of tasks you performed at Burlington.
A. I was there to -- helping them out with the drywall and then pressure wash the building, do the light, light work, have to do the ceiling. And then also I worked the roof, if we had a leak in the roof, stuff like that.
Q. Did you -- were there other workers there when you were there?
A. Yes. It was a lot of workers there.
Q. Other than Burlington itself, did you ever work on any other buildings or projects in the entire shopping center area?
A. Yes.

Q. Do you recall what other parts of the shopping center you worked in?
A. I do a little bit of work in Chase, Chase Bank that they built. And I also do some work in DICK'S as well. And then I also do some work with Eric when he was building a road between the two properties.
Q. Let me take a step back. What did you do at the Chase area? What did you do there?
A. I was there to like -- it was the fence from the bottom -- when they were building the Chase from the ground up, it was the fence. I tear it down --
Q. The groundwork?
A. Yeah. Groundwork, yeah.
Q. And did you work on a road?
A. Yes.
Q. Who did you work with -- did you work with other people?
A. Yes.
Q. Do you recall who you worked with on the road?
A. Yeah. It was me and Eric and Glenn.
Q. You say Eric, meaning -- did you say Eric?
A. Yes.
Q. Who is Eric?
A. Eric Sheppard.
Q. How did you refer to Mr. Sheppard when you worked with him?
A. Mr. Sheppard.

Q. Okay. Did you refer to him as Mr. Sheppard or Eric?
A. I refer to him as Eric.
Q. How was working at the shopping center?
A. It was great. It was a great environment to work, everybody friendly, everybody followed direction.
Q. Did you get paid?
A. Yes.
Q. Was it a good job to have in COVID?
A. Yes.
MR. ETRA: Your Honor, may I have a moment?
THE COURT: Certainly.
(Pause in proceedings.)
MR. ETRA: No further questions.
THE COURT: All right. Any cross-examination?

CROSS-EXAMINATION

BY MS. JIMENEZ:
Q. Mr. Kleef, when you were working in Orlando -- do you still work for Mr. Sheppard?
A. Yes.
Q. When you were working in Orlando under Mr. Vasilas, what was the name of the company that paid you?
A. It's HM Management something.
Q. Were you -- did you receive wages? Did you get paid and have some of your pay taken?
MR. ETRA: Objection. Compound question. I would

respectfully request that each question be asked.

THE COURT: Yeah. Let's break it down, please.

MS. JIMENEZ: Yes.

BY MS. JIMENEZ:

Q. You were paid by check?

A. Yes. By check.

Q. Were there withholdings from your paycheck? Do you know what I'm -- I'm sorry. Go ahead.

A. Can you explain like what you mean by holding?

Q. Sure. Did you receive like a gross pay and a net pay --

A. No.

Q. -- that you're aware?

A. No.

Q. Were you provided a W-2 Form at the end of the year?

A. No.

Q. Were you provided a 1099 Form at the end of the year to report to the IRS?

A. Yes.

Q. When was the groundwork that you -- I'm sorry -- not the groundwork. You said you worked on a road with Eric and Glenn?

A. Yes.

Q. When was that?

A. When?

Q. Yes.

A. I'm not sure the exact date, but I say around I think last

year.
Q. Was it early -- was it in 2021?
A. Yes.
Q. Or was it -- I'm sorry. Last year being 2023?
A. I think -- it's 2021, I think. I believe so.
Q. All right. And Mr. Eric Sheppard, how did he look to you?
A. Can you explain that to me? How he look at me you said?
Q. How did he look to you? How did he look? Did he do some of the work?
A. Yes. We was -- we got some heavy-duty equipment. We was supposed to tear up the ground, setting up gravel, because we had dump truck coming in. Like, we got to like fixing some pipe -- not fixing some pipe. It was a pipe under the ground. We supposed to protected it. A big gigantic pipe, like it's not supposed -- because we got to cover it up with cement because we don't -- when no cars coming in and out, because -- we don't want it to bust. It was like a big pipe under the ground. We got to protected that. Then we have to move stuff like concrete out of the way so we can get the work together.
MS. JIMENEZ: Thank you, sir. No other questions, Your Honor.
THE COURT: All right. Any redirect?
MR. ETRA: No redirect, Your Honor.
THE COURT: Thank you, Mr. Kleef. You are excused.
(Witness excused.)

THE COURT: And the Defendant's next witness.

(Pause in proceedings.)

THE COURT: The Defendant's next witness, please.

MS. WEINTRAUB: Glenn Sheppard, Your Honor.

THE COURT: All right. Sir, if you'll come forward.

All right, sir. If you'll come right over here, sir.

Remain standing. Raise your right hand to be placed under oath.

GLENN SHEPPARD, DEFENSE WITNESS, SWORN

COURTROOM DEPUTY: Thank you.

You can have a seat.

Would you please state your name and also spell it for the record.

THE WITNESS: My name is Glenn Alan Sheppard. G-L-E-N-N. Middle name Alan, A-L-A-N. Last name Sheppard, S-H-E-P-P-A-R-D.

COURTROOM DEPUTY: Thank you.

MS. WEINTRAUB: May I proceed?

THE COURT: Yes, of course.

DIRECT EXAMINATION

BY MS. WEINTRAUB:

Q. Good morning, Mr. Sheppard.

A. Good morning.

Q. Are you related to Eric Sheppard?

A. Yes. He's my brother.

Q. Do you have any other siblings?

A. Yes. I have a sister, and she lives in Tampa. She's a little younger than me. I'm the oldest.

Q. Where did you grow up?

A. Well, we grew up in Miami Beach.

Q. Did there come a point in your young life when you moved away from Eric?

A. My parents got divorced. I moved to Reynosa, and then eventually Asheville, North Carolina. And my sister moved with me and Eric stayed here.

Q. Did you go to college?

A. Yes.

Q. Where did you go?

A. I went to the University of North Carolina at Asheville.

Q. And what did you study?

A. I studied economics and finance.

Q. Was your study interrupted? Was there an accident with your mom?

A. My mom, when I was a freshman in college, got hit by a drunk driver. I think that was 1986, if I'm not mistaken. And she was in a coma for -- God -- six months to a year. She was -- they -- she had to grow back up. She was like a child. They hit her, and then we almost pulled the plug on her. But thank God we didn't, and she's okay now. But yeah, it was bad. It was bad.

Q. And was the rehab difficult?
A. Oh, very difficult. It was like she was reborn again. It's like she had to learn how to walk and talk. And she didn't know anything, really. And it took -- I don't know -- five, 10 years for her to really come back and be like a normal functioning person.
Q. Mr. Sheppard, did there come a time when you started to work for your brother Eric?
A. Yes.
Q. And when was that?
A. Approximately 2005 or 2006 I started working for Eric.
Q. And what were you hired to do?
A. I was hired as a project manager.
Q. And what project were you overseeing?
A. The first project I did was the Golden Sands Hotel. It was a -- it was right next to Canyon Ranch, and I converted it from a hotel into a sales center.
Q. Into a sales center for Canyon Ranch?
A. For Canyon Ranch. For Canyon Ranch, correct, on 69th and Collins.
Q. And how long did that project take to get done?
A. When I first started the project, it took approximately a year and a half, two years. Me and Jeff Graff started -- he worked with me and he helped me get all the paperwork, all the permits, all that kind of stuff together. And eventually,

within six or eight months, he moved back to the office and they assigned him to another project. And I ended up -- I -- I acted as the contractor. I hired everybody. If I hired them, I fired them. I did all the permitting and everything. We did it -- I bought the materials. We self-performed and we did -- or I did everything.

Q. Would Eric come by the project site?

A. Sometimes he would but not -- not that often.

Q. And did you also work on the Flagler project?

A. Yes. West Flagler, yes.

Q. And how many full-time workers -- what is CAM?

A. Oh, CAM. CAM is common area maintenance. CAM is what I really do for a living. The tenants, along with their rent -- they pay rent and they pay what's called CAM. CAM takes care of everything essentially on the exterior of the building.

Q. So like the landscaping, sprinklers?

A. If a tenant -- if the tenants share, that's what CAM is. For example, if you had a roof, and you had four tenants with a roof, we would take care of that because you couldn't have one tenant do it. You know, if it leaks, you never know where it's going to leak. So it can be either one of them. So we would take care of anything that tenants would share responsibility for.

Q. So it was like a maintenance fee in a condo building or something?

A. Similar. Yes. The roofs, the fire alarm systems, the asphalts, the striping, the lights, the planters. What else? We do all the inspections for the blackflows. We have a lift station sometimes that we do. Actually, we have a lift station over at -- not this one, but I do the lift station too. But it's all common area, yes.

Q. Now, did there come a -- fast-forward from then. Did there come a time when you started working on Alafaya Trails --

A. Yes.

Q. -- in Orlando?

A. I started working on Alafaya Trails -- it used to be that Jeff Graff ran Alafaya Trail approximately 2004, 2005. So me and him would go occasionally and do, you know, just small maintenance to the property. And I believe Joe was there. Joe Beirne would do actually what I do now. He did all CAM at the Burlington over at -- in Orlando, that property.

Q. So fast-forwarding to 2017, '18 --

A. Okay.

Q. -- did you stay in Orlando and do this work at Alafaya Trails?

A. I didn't start staying in Orlando until I started working for Jeff Vasilas. So --

Q. And when was that?

A. That was approximately February, March 2020, somewhere in there.

Q. And when you say: "Working for Jeff Vasilas," was that because Jeff Vasilas was the project manager or executive at the time of the project?
A. Okay.
MS. JIMENEZ: Objection. Leading.
THE COURT: Sustained.
BY MS. WEINTRAUB:
Q. Was Jeff the owner of that property?
MS. JIMENEZ: Objection. Leading.
THE COURT: Overruled. You may answer the question.
THE WITNESS: I'm sorry. Ask the question again.
BY MS. WEINTRAUB:
Q. Was Jeff Vasilas the owner of that property?
A. No. He wasn't the owner. He was -- he represented himself as Eric's partner, like if they were partners together.
Q. So he would tell people that he was?
A. He -- he told everybody --
MS. JIMENEZ: Objection. Calls for hearsay.
THE COURT: Sustained.
BY MS. WEINTRAUB:
Q. What did Jeff Vasilas tell you?
MS. JIMENEZ: Objection.
THE COURT: Sustained.
BY MS. WEINTRAUB:
Q. Who owned the property?

A. Eric and his partner owned the property.
Q. And his partner is?
A. I believe Rob Kallman is his partner on that property. I believe that to be true. I know he's a partner there.
Q. Now, did there come a time when you went up in February, March 2020 to stay up there for a while at Orlando?
A. I went -- I used to work on the West Flagler property. We did the CAM there. They hired a management company. Okay? So I was asked by Eric: "Hey, you want to go work in Orlando?" I said: "Yes."
So February 2020, March, we would stay -- we would go to the hotel there. I forget the name of it. And I would stay there and I would go for approximately two weeks at a time. I'd go for 10, 12 days, I'd go home for the weekend, and I'd come back for 12 days.
Q. Was that the Holiday Express?
A. The Holiday Express, right. It's night next to the property.
Q. Were you working on Burlington at that time?
A. I was working on the Burlington, and I did -- I did what Joe Beirne used to do. Joe Beirne used to do the exterior work. But my main job was to do the CAM work, the exterior work at the property in Orlando.
Now, they were building a Burlington, so that would take priority over what I was doing, all the exterior landscape

work. So I would come inside occasionally and do some work inside too, depending what Jeff asked me to do. Whatever Jeff said I would do it.
Q. Who was in charge of the Burlington project?
A. Jeff Vasilas.
Q. Did Jeff Vasilas -- was he a hard worker?
A. Jeff was a very hard worker. He worked very hard. We all worked very hard. I'd usually work in the morning, but he -- it wasn't uncommon for him to call me at my hotel room to tell me to come and work at night.
Q. And did Jeff Vasilas get things done up there? Did he know what he was doing?
A. He did know what he was doing and he worked very hard.
Q. Was Burlington a big job to get built out?
A. I mean, a 50,000, 60,000 square feet is a pretty big building. You can judge for yourself.
Q. Were the ceilings high?
A. Very high.
Q. Did you do repairs and work inside sometimes?
A. Sometimes.
MS. JIMENEZ: Just continued leading, Your Honor. Just object.
THE COURT: Sustained.
BY MS. WEINTRAUB:
Q. Were there a lot of people in the Burlington build-out --

MS. JIMENEZ: Same objection.

THE COURT: Overruled.

BY MS. WEINTRAUB:

Q. You can answer.

A. I'm sorry. Ask the question again.

Q. Did you observe a lot of people working in Burlington or very few?

A. If you gave me -- asked me a total number of people who worked in Burlington, I would say a hundred people, maybe a little bit more. Now, at any point in time you could have anywhere from four people to 30 people working. Remember, it's construction. Everything is staged, so you have to wait. One person does their job, the next person does their job, the next person does their job.

Q. And what is staging? I mean, why couldn't you have --

A. Okay. We tore up all the floor -- the whole floor -- it used to be a Toys "R" Us. Okay? And the whole floor had to come up. It was the vinyl, nasty, funky stuff. Okay? So you can't have the lifts in there and guys working on the ceiling if you're pulling up the floors. I mean -- I don't know what else to say.

Q. Okay. Who bought the materials that were being used?

A. Eric's credit card bought all the materials.

Q. Is that the famous AmEx card?

A. The Black Card, yes. Carte blanche.

Q. Who had that card?

A. Well, Jeff mostly, but Joe had it a lot too. And actually, I had it some too.

Q. So several different people --

A. Yes. It wasn't just one credit card. There was more than one credit card.

Q. And did you go to Home Depot frequently?

A. I didn't as much, but Joe did. Joe did a lot and so did Jeff. And if they -- you know, they invited me sometimes. And sometimes if I needed stuff they would bring me.

Q. Did you buy tile?

MS. JIMENEZ: Objection to relevance, Your Honor.

THE COURT: Sustained.

BY MS. WEINTRAUB:

Q. Do you know that materials were bought?

MS. JIMENEZ: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: Ask me the question again. I'm sorry.

BY MS. WEINTRAUB:

Q. Do you know what materials were bought?

A. Okay. If you walked into the Burlington, okay, what we had was pallets. There was pallets there. There was probably 10 to 15 pallets scattered all over the floor. We had tile. We had drywall. We had tools. We had HVAC stuff --

Q. What?

A. Air-conditioning.
Q. Got it.
A. We had ductwork.
Q. Okay.
A. We had power tools for the lawnmower. We had -- I mean, we had a lot of stuff.
Q. And that was all bought and paid for by whom?
A. Well, the credit cards. Eric's credit cards, I'm assuming.
Q. Now, shortly after you got there to stay there, did COVID hit?
A. Actually, I believe -- no. COVID was pretty much in full force when I got there.
Q. Okay. Now, do you know when there was occupancy -- strike that.
How big is this property, this Alafaya Trails?
A. Are you talking all the way from the DICK'S to the Burlington? Twenty acres, 25, something like that.
Q. And do you remember when there was occupancy into Burlington in November? Were you there?
A. Oh, yeah.
MS. JIMENEZ: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: I was in the property, yes. When Burlington took over, I was there. I was there working.

BY MS. WEINTRAUB:
Q. And do you know when that was?
A. October, November, December 2020, somewhere in there.
Q. Now, was there still a lot of work to do after Burlington moved in?
A. You're asking about a punch list. Yes. Punch list.
Q. Was there a punch list?
A. Yes.
Q. What is a punch --
A. A punch list is -- what happens is you get a TCO, okay?
Q. Wait. Wait. Wait. What's a TCO?
A. A temporary certificate of occupancy. A temporary certificate of occupancy allows the tenant to move all their stuff in. Okay? So you get the TCO, and as they start moving in they start making a list of things that aren't necessarily -- they're not horrible things, but little things that you need to fix --
Q. Give us an example of some of the --
A. The doors were broken. The tiles were broken. There's a hanging wire. The paint is chipped over here, blah, blah, blah, blah.
THE COURT: And Ms. Weintraub, we are going to stop for a lunch recess at this time, as I advised. It's five minutes to 12.
Ladies and Gentlemen, I'll see you back here at one

o'clock. Have a pleasant lunch.

COURT SECURITY OFFICER: All rise.

(Jury not present, 11:55 a.m.)

THE COURT: Mr. Sheppard, as you are on the witness stand, you're not to discuss your anticipated testimony or any aspect of the case. And I'll see you back here at one o'clock. Have a pleasant lunch.

MS. WEINTRAUB: Thank you, Judge.

(Recess from 11:55 a.m. to 1:06 p.m.)

THE COURT: All right. Good afternoon. I apologize for the delay.

Do we have our witness?

MS. WEINTRAUB: Thank you, Judge. Etra is getting him.

THE COURT: Okay. Good.

Can you check? Do we have all of them ready to go?

Okay. Perfect.

All right. Come on forward, sir.

And if everyone will remain standing for the jury.

COURT SECURITY OFFICER: All stand for the jury, please.

(Before the Jury, 1:06 p.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

And we will continue with the direct examination.

MS. WEINTRAUB: Thank you, Your Honor.

BY MS. WEINTRAUB:

Q. Mr. Sheppard, when you were working on Alafaya Trails, on the -- at the shopping center, who paid people there?

A. Jeff Vasilas.

Q. And do you know where he got the money to pay people?

A. Mostly from Eric.

Q. Did Jeff talk about working for Eric in the future and other projects?

A. Yes.

MS. JIMENEZ: Objection. Leading.

THE COURT: Overruled. I'll allow it.

BY MS. WEINTRAUB:

Q. What's phase 3?

A. Phase 3 is a swampland that is sitting behind the Burlington and the DICK'S, the current property at Alafaya Trails.

Q. Was there approval to start with site work during COVID?

MS. JIMENEZ: Objection. Leading.

THE COURT: Overruled.

THE WITNESS: One more time. I'm sorry.

BY MS. WEINTRAUB:

Q. Was there approval to start the -- do you know when the approval came in to start phase 3?

A. I don't know the answer to that question.
Q. Was any site work done on phase 3?
A. A small portion of site work was done, yes.
Q. Did anything happen with rental equipment up there that was a problem?
A. Jeff rented a total of three front loaders and --
Q. Hold on. What's a front loader?
A. You sit in it and it loads and pulls the muck up like this.
Q. Okay.
A. Okay? So he went out there -- and I don't know the reason why. I told him not to. But he tried to flatten out the muck so -- I think what he said was so people can look and see what phase 3 would possibly look like.
Q. And what happened?
A. Well, the first one sunk. They were able to get it out. The second one sunk, and they were able to get it out. The third one he totaled, and they needed this -- I don't even know how to describe it. It was a crane, 70 feet long, and he -- he actually ruined it. And they had to actually -- it might have been two or three cranes. And they had to pull it and yank the whole thing out and bring it out. It was actually a tourist attraction. People would come by and take pictures of it.
Q. What had to be done for Chase Bank to be built?
A. What -- our personal --
MS. JIMENEZ: Objection. Relevance, Your Honor.

THE COURT: Sustained.

BY MS. WEINTRAUB:

Q. Did you work on this -- was Chase part of phase 3?

MS. JIMENEZ: Objection. Relevance.

THE COURT: Sustained.

MR. ETRA: Judge, it's part of the Indictment.

MS. JIMENEZ: No, it's not.

THE COURT: The objection is sustained.

BY MS. WEINTRAUB:

Q. Let's talk about Eric's home office. After COVID hit, was the office shut down on Biscayne Boulevard?

A. We -- was the office -- ask me the question again.

Q. Did the office on Biscayne Boulevard close during COVID?

A. Yes. It closed during COVID. Correct.

Q. And where did the office go?

A. It went from -- well, we didn't really have an office.

Q. So where did Eric put the stuff that was in the office?

A. Well, we had storage and then we had his house.

Q. Okay. So do you work out of the house -- the home office?

A. Do I work out of --

Q. Do you go to the house, Eric's house?

A. Yes. Right. That's where his office -- if I want to see him, yes, there's where I go.

Q. Do other people work in the office at that house?

A. Some people, yes.

Q. Does Mary Ataca work there?
A. Yes.
Q. Is Eric good with the computer?
A. No.
Q. What's the best way to communicate with Eric?
A. Telephone.
Q. Does Eric work on more than one project at a time?
A. Eric works on a lot of projects.
Q. Was there a time when Jeff Vasilas was at the house a lot?
A. Yes.
Q. And was he in the office?
A. Yes.
Q. And was he good on the computer?
A. Better than Eric. Yes.
Q. And was Jeff Vasilas on Eric's computer?
MS. JIMENEZ: Objection. Leading.
THE COURT: Sustained.
BY MS. WEINTRAUB:
Q. Did you ever see Jeff Vasilas on Eric Sheppard's computer?
A. Yes.
MS. JIMENEZ: Objection. Leading.
THE COURT: Overruled.
BY MS. WEINTRAUB:
Q. Did you ever observe Jeff Vasilas -- I'm sorry?
THE COURT: It's overruled. You may answer the

question.

THE WITNESS: Did I answer it?

THE COURT: You may answer the question, sir.

THE WITNESS: Well -- I'm sorry. I already answered it, right?

BY MS. WEINTRAUB:

Q. Sorry. Have you seen -- did you see Jeff on Eric's computer?

A. Yes.

Q. And did you ever see Jeff use his own computer?

A. He had a notepad he would carry around with him. He kept everybody's time and all his permits -- he had like a little carry thing.

Q. So does that mean no --

A. No, I've never seen him with a computer.

Q. Would Jeff go to the house and --

MS. JIMENEZ: Objection. Leading.

BY MS. WEINTRAUB:

Q. -- office when Eric was not present?

THE COURT: Sustained. Rephrase, please.

BY MS. WEINTRAUB:

Q. Were there times when Eric was not home and Jeff Vasilas was in the office that you observed?

A. Yes.

Q. To your knowledge, did Jeff Vasilas have free rein to go in and out of the house in the office in the back -- through the back?

A. Free rein? He had access -- I had -- he didn't have free rein, no.

Q. Did he have access to get in the house without somebody letting him in?

A. Yes. Yes.

Q. And what about you -- he lives in a gated community?

A. Yes. There's a gate, and if your name's on the list they let you through.

Q. And is your name on that list?

A. Yes.

Q. To your knowledge, when Jeff was alive was his name on that list?

A. Yes. Uh-huh.

Q. Have you ever observed people bringing papers in to Eric working to sign?

A. Yes.

Q. And does he stop whatever he's doing and read everything carefully --

A. No.

Q. -- before he signs it?

A. No.

Q. To your knowledge and observations, does Eric rely on others that he works with?

MS. JIMENEZ: Objection. Vague.

THE COURT: Do you understand the question, sir?

THE WITNESS: Ask the question again.

THE COURT: All right. Clarify, please.

BY MS. WEINTRAUB:

Q. Does Eric rely on other people?

MS. JIMENEZ: Objection. Vague. About -- for what?

THE COURT: Yeah. Let's be a little bit more specific.

BY MS. WEINTRAUB:

Q. At work have you observed Eric rely on others?

A. Yes.

Q. Such as Jeff Graff?

A. Jeff Graff, me, Mary, Jeanette.

Q. Did he rely on Jeff Vasilas?

A. Yes.

MS. WEINTRAUB: If I can just have a minute, Judge.

THE COURT: All right.

(Pause in proceedings.)

BY MS. WEINTRAUB:

Q. Glenn, did you get paid during COVID?

A. Yes. Yes.

Q. And who were you paid by?

A. Jeff. Jeff Vasilas.

Q. And was that by check?

A. Yes.
Q. And was it from Eric's company?
A. There was more than one -- I received checks from different companies for different things.
Q. Okay. And were they all -- were those companies owned by Eric?
A. Not all of them. No.
Q. What other companies were there?
A. Jeff had a company. And if I said King of Diamonds, then that's what I remember. But it was a company that he owned. I think that was it, but I'm not a hundred percent sure.
Q. So some of the checks were from King of Diamonds and some were from Eric's company?
A. Yes.
(Pause in proceedings.)
BY MS. WEINTRAUB:
Q. Are you aware if Jeff Vasilas would leave Orlando, go down to Miami to Eric's house, get checks, and go back and forth?
MS. JIMENEZ: Objection. Leading.
THE COURT: Sustained.
BY MS. WEINTRAUB:
Q. Did you ever go back and forth with Jeff Vasilas from Orlando to Miami on a quick trip?
A. Yes.
Q. And what was the purpose of that trip?

A. He told me to get money from Eric.
Q. And did you do that more than once?
A. I normally didn't go with him. He normally went by himself.
Q. And do you know how often Jeff would go?
A. Well, remember, he lived in Miami. So he would -- at least once a week, I would think.
MS. WEINTRAUB: I have no further questions, Judge.
THE COURT: All right. Any cross-examination?

CROSS-EXAMINATION

BY MS. JIMENEZ:
Q. Good afternoon.
A. Good afternoon.
Q. Mr. Sheppard, how long have you worked for your brother?
A. I started approximately 2005 or 2006.
Q. You still work for your brother, correct?
A. Yes.
Q. You helped move -- when the HM Management office shut down during COVID, you helped move --
A. Yes.
Q. -- the papers out of that office?
A. From 12000 Biscayne Boulevard, you're talking, right?
Q. Yes.
A. I -- yes.
Q. There were binders of records that were moved out of the

office?
A. Yes.
Q. Boxes of records?
A. We had like those yellow file cabinets with the drawers.
Q. The filing cabinets were moved out?
A. Yeah. Yeah.
Q. And you helped move things into a storage facility?
A. Yes. Yes.
Q. You helped move things into Mr. Eric Sheppard's home office?
A. Yes. Yes, ma'am.
Q. And the office at 12000 Biscayne Boulevard had paper copies of a lot of records, correct?
A. Yes. There was -- are you asking how many?
Q. Well, I'm not asking how many. But it had a lot of paper copies of -- had paper copies of a lot of different records, correct?
A. Yes. I think so. Yes.
Q. Paper copies of leases, correct?
A. I know there were leases in there, yes, because I read some of the leases.
Q. Paper copies of tax returns, correct?
A. I don't know about tax returns. Remember, I worked in -- I did property management. So the leases and all the other stuff, that would be me. But I didn't really -- I couldn't --

I would say no for taxes because I don't know that. You understand?

Q. You don't know?

A. I don't know. So I don't know. Sorry.

Q. Now, when -- in 2020 and 2021, before Mr. Vasilas passed away, he was working for Eric Sheppard, correct?

A. Yes. Yes.

Q. In 2020, he spent most of his time in Orlando or was he living in Orlando?

A. No. We stayed at the hotel, at the Holiday Inn Express, me, him, and a lot of other people. We had workers there.

Q. And was he in Orlando in 2020 most of the time?

A. When you say -- for the whole year?

Q. In the span of a month, how much time was Jeff Vasilas in Orlando?

A. Oh. I would say at least 15 to 20 days.

Q. Workdays?

A. Yeah. Working, right. Uh-huh.

Q. And then after you received -- what is it, the TCO --

A. TCO.

Q. -- temporary certificate of occupancy --

A. Yes, ma'am.

Q. -- there was a pretty extensive punch list, correct?

A. Correct.

Q. Mr. Vasilas continued to work for that Burlington build-out?

A. Sometimes he took me. But yes, he did a lot of the work and I think Kleef did a lot of the work too.

Q. I'm sorry?

A. Kerby. Kerby Kleef.

Q. Kerby?

A. Yes.

Q. And Mr. Vasilas, in 2021, was going back and forth to Orlando, correct?

A. Yes.

Q. And he was going back and forth to Orlando to work on the items that were involved in the punch list, correct?

A. Yes.

Q. That's what he was doing? I mean, that's what he was doing in Orlando?

A. After the TCO, that's what's left is the punch list. I mean, there's other work -- there's common area work to do. And I did some of that too. But for Burlington, yes, the punch list -- after you get a TCO, you go and you do the punch list because that's what they -- you want to get a CO. The CO is the goal. A certificate of occupancy is the goal. So once you finish the TCO, and they move in and everything is done, you get the CO.

Q. When did that final certification of occupancy -- when was that obtained?

A. I really don't know the answer to that question. I can't give you that answer. I remember the TCO because I was there. And you have to go -- remember, that's the last step and that's really the goal, is to get the TCO. That way they can move in and sell their product, Burlington.
Q. Was the final certificate of occupancy obtained in 2021 or later?
A. It's public record. I don't know the answer to that question, though.
Q. Did you also yourself go back and forth to Orlando --
A. Sometimes.
Q. -- in 2021?
A. Not as much as Jeff.
Q. Jeff was also paying -- going back and forth, paying people in Orlando, correct, the workers, the laborers?
A. You're talking before the TCO, right, before we got done?
Q. After the TCO --
A. Yeah. Less people, but yes.
Q. And did you obtain checks directly from the Defendant, from Eric Sheppard, or did you get checks --
A. Me personally?
Q. -- from Mr. Vasilas?
A. Me personally?
Q. Yes. You personally.
A. I got all my checks from Jeff.

Q. You got all your checks from Jeff, not from your brother?
A. No. I got all my checks -- I worked for Jeff.
Q. And Jeff worked for your brother, right?
A. Yes.
Q. Okay. And so the King of Diamonds checks that you were paid, you're not suggesting that you were working for King of Diamonds, correct?
A. Not at that time I wasn't. But that corporation -- he wrote checks out of that for whatever reason. But I -- for two or three weeks I did work at the King of Diamonds, yes.
Q. All right. Are the checks that you're referencing that were given to you from the King of Diamonds -- was that for the two or three weeks that you worked for the King of Diamonds, or was that for the regular --
A. Both.
Q. -- HM-UP Development Alafaya Trails work?
A. Both. Both. So I -- when I worked there, he gave me a check for that. And when I worked at Burlington, I got a check from the King of Diamonds -- one or two, maybe more. And then HM, I got checks from them too when I worked at Burlington.
Q. Now, did you ever see Jeff Vasilas do -- when he was doing work for Eric Sheppard, doing work other than the contractor type of work that you knew him to do in Orlando?
A. He spoke about a lot of projects he was working on. And he actually -- he talked to me about maybe working at a restaurant

he was going to open. But him and Eric always had deals, different stuff they were working on.
Q. Different deals that they were working on?
A. Yeah.
Q. You said that you saw Jeff Vasilas using Eric Sheppard's computer?
A. Yes.
Q. When did you see that?
A. You're asking me for -- he did -- occasionally he would be on the computer because Eric really didn't do computer well. So he would do it for Eric.
Q. And what were you doing? How did you have the opportunity to observe him?
A. That was Eric's office. I was there. I mean, if you wanted to talk to Eric, you had to go to his office.
Q. And when you saw him on Eric Sheppard's computer, was Eric there as well?
A. Sometimes.
Q. And --
A. Remember, Eric -- what Eric does all day, he walks around in circles and talks on his phone. So you would be sitting there talking to Eric, and the phone would ring, he'd pick it up, and he'd walk out the door and he'd make a circle, and he did it all day long. And I can't explain to you why he does that.

So me or Jeff would be inside his office -- or I would be inside his office working on something else, and he would just walk out in the middle of a conversation.

Q. Now, what was Jeff Vasilas working on when he was in Eric Sheppard's office?

A. I don't know what he did on the computer. I couldn't tell you that.

Q. Did Eric Sheppard -- was Eric Sheppard aware that Jeff Vasilas was on his computer?

A. Yes. Yes.

(Pause in proceedings.)

MS. JIMENEZ: May I have a moment, Your Honor?

THE COURT: All right.

(Pause in proceedings.)

BY MS. JIMENEZ:

Q. Mr. Sheppard, were you a W-2 employee of Eric Sheppard's companies?

A. I'm not really sure. I know I got a tax form. But if you're asking whether it's possible that I am, then I don't -- I hand the form to my wife and my wife does my taxes. So I don't really -- if you tell me I am, then I'm not going to argue with you.

Q. Did you receive a form that said 1099 on it?

A. I don't remember that. I don't remember.

Q. You don't know?

A. I don't know, but it's possible.

(Pause in proceedings.)

BY MS. JIMENEZ:

Q. Did you see Jeff Vasilas doing work around Eric's house, like relating to his pool, fixing something having to do with his pool?

A. I don't remember.

Q. Did you ever see that?

A. I don't remember. I don't recall that. That's possible.

Q. Did you see him do work that involved repairing his gate, the front gate to the house or the property?

A. I don't recall that, but it's possible too.

Q. Did you see Jeff Vasilas do work around the property for Eric Sheppard?

A. We'd occasionally help Eric pick up something or -- remember, he had a lot of tools at his house. And sometimes we'd store them there and move stuff back and forth, stuff like that.

Q. Now, you said that you knew that Jeff Vasilas had access through the gate. How did you know this?

A. I know that because I did the same thing he did. If you come into the gate, and if you're not on the list, they ask for your ID and they call the house. If you're on the list, they look it up and you're there.

Q. Right. So you're on the list?

A. Yes. Yes. Of course.

Q. Right. Right. So when you come through, you know you're on the list?

A. They know me, yes. And they let me through, right.

Q. All right.

(Pause in proceedings.)

MS. JIMENEZ: Mr. Sheppard, I don't have any other questions.

THE COURT: Any redirect?

MS. WEINTRAUB: No, Judge. Not necessary.

THE COURT: Thank you, Mr. Sheppard. You are excused.

(Witness excused.)

THE COURT: And the Defendant's next witness.

MR. CAVALLO: Your Honor, our next witness is Mr. Bouchner, our forensic accountant.

THE COURT: All right.

(Pause in proceedings.)

THE COURT: Is this Mr. Bouchner?

MR. CAVALLO: Yes, Your Honor.

THE COURT: Good afternoon, sir.

Sir, if you'll remain standing. Raise your right hand to be placed under oath.

SCOTT BOUCHNER, DEFENSE WITNESS, SWORN

COURTROOM DEPUTY: Could you please state your name and also spell it for the record.

THE WITNESS: Yes. My name is Scott, S-C-O-T-T, Michael, M-I-C-H-A-E-L, Bouchner, B-O-U-C-H-N-E-R.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MR. CAVALLO:

Q. Good afternoon, Mr. Bouchner.

A. Good afternoon.

Q. Where are you currently employed?

A. Berkowitz Pollack Brant Advisors + CPAs.

Q. Could you just tell us again, very briefly, a little bit about Berkowitz Pollack.

A. Sure. We are a public accounting firm. We're approximately 400 people. We have four offices in Florida, another one up in New York. We have -- in addition to the forensic advisory services work that I do, we also have a full audit practice, tax practice and other consulting work.

Q. What is your position with the firm?

A. I am the director in charge of forensic advisory services.

Q. And again, very briefly, just a little educational background.

A. Sure. My educational background -- I have a bachelor's degree from George Washington University in Washington, DC. And then I got a MBA, a Master's in Business Administration from Columbia Business School in New York.

Q. Could you please tell us a little bit about your work

history over the last few years.
A. Sure. How far back would you like me to go?
Q. Nineties.
A. Okay. So I graduated from Columbia in 1990, and I began working at Price Waterhouse. Price Waterhouse is the predecessor to PricewaterhouseCoopers, today one of the Big Four firms. I worked at Price Waterhouse for about six years. I then went to KPMG for approximately a year and a half before I moved down to Florida and joined Coopers & Lybrand, which merged with Price Waterhouse. And then, in 1999, I began working at my current firm. I'm just starting my twenty-fifth year there.
Q. And how many years have you been working as a forensic accountant?
A. Since approximately 1992, so a little over 30 years.
Q. And what is your area of expertise?
A. So I am involved in forensic accounting work.
Q. Can you just give us a brief description of what's involved in your forensic accounting work.
A. Sure. So forensic accounting covers many areas, including investigations. So I'll get involved in corporate investigations, bank investigations, fraud matters, embezzlement matters, things that require an analysis of financial records in order to be able to explain often to courts what was happening with the target's finances.

I'm also involved doing business valuation work. I provide expert testimony involving economic damages. So a plaintiff may hire me to calculate damages that they've suffered. I may be hired by a defendant to provide rebuttal testimony. I also do a lot of business valuation work as well. So all of those areas I think are typically included within forensic accounting.

Q. And the investigations that you're typically involved in, do those usually involve analyzing the source and uses of funds?

A. Yes. That's normally one of the central parts of any investigation, the sources and uses of cash.

Q. And does that process involve -- usually involve differentiating between business and personal expenses?

A. Often that's an issue. Not in every case, naturally. But beside -- in the investigation area, if it is an issue, it's also something that would be part of business valuation work, tax work. Business versus personal expenses are often things that need to be looked at and categorized.

Q. It's fair to say that you have experience performing the kind of analysis you were asked to prepare in this case?

A. Yes. For the better part of the last 30 years.

Q. Very briefly, could you just run through some of your credentials and certifications.

A. Sure. I'm a certified management accountant. I am a certified fraud examiner. I'm a certified valuation analyst. And I am a certified insolvency and restructuring advisor, which involves bankruptcies, receiverships, things of that nature.

Q. Do you also have any involvement with the American Institute of Certified Public Accountants?

A. Yes. Over the years I've been very involved with what's known as the AICPA. I was on their economic damages task force, where I've written practice aids for the AICPA that are used by forensic accountants around the country.

I was on the committee that designed the CFF examination. That's Certified in Financial Forensics. The CFF is a credential that the AICPA gives to forensic accountants. Because of the work that I did, I was named the volunteer of -- a volunteer of the year award back in 2016.

I speak at conferences. So yes, I've had a lot of work in that area.

Q. How many times have you testified as a expert in forensic accounting?

A. Approximately 75 times.

Q. Which courts have you testified in?

A. I've testified in federal court, state courts, bankruptcy court, in arbitrations, and other dispute resolution forums.

MR. CAVALLO: Your Honor, I offer Mr. Bouchner as an expert in forensic accounting.

MS. MARTINEZ: No objection, Your Honor.

THE COURT: All right.

BY MR. CAVALLO:

Q. Mr. Bouchner, what were you asked to do in this case?

A. I was initially asked to review all of the sources and uses of funds that were at issue for the companies involved in this case.

Q. Can you tell me which those companies are?

A. Sure. HM Management, HM-UP Development Alafaya Trails, HM Four.

Q. And did that involve looking at the personal and business expenses related to those companies?

A. Yes, it did.

Q. And just so we're on the same page, when we both refer to the companies throughout your testimony, could we agree we're referring to HM-UP, HM Management, HM Four?

A. Yes.

Q. Were there any other companies you had records for but you did not consider in your analysis?

A. Yes. There was a large production of documents that were produced by the Government, including bank statements. There were other companies as well, CJUF, HM-UP TRU. And then there were other companies owned by Mr. Sheppard that were among those bank statements.

Q. And why was the decision made not to include those in the analysis?

A. Well, I guess, number one, I was focusing on the companies that received the government loans. And some of it was per discussions with counsel as well.

Q. Did it also relate to which companies were operating at the Orlando shopping center?

A. Yes. HM -- HM-UP was the owner of the property. HM Management was providing management services on behalf of HM-UP for the property. HM Four was the company that had a 99 percent ownership interest in HM-UP. So they all had some connection to the Orlando property and a relationship to one another.

Q. And just very briefly, because we'll go into it in more detail, could you please tell us what analysis you were asked to give and what kinds of opinions you were asked to give in this case.

A. Sure. So I was asked to review the information and initially determine whether the business expenses that were paid for by the collective group of companies were in excess of the government loans that were made.

I was asked to also look at the personal expenses and see how those expenses compared to the monies that came into the company from non-government sources.

I was asked to look at the historical expenses of the company for personal expenses and how they -- you know, how they were before the government loans were made and after.

And I was also asked just in general to talk about the fungibility of cash and how monies -- that cash is essentially interchangeable and that monies travel between different types of accounts as well, and to talk about that.

Q. What specific information did you review in order to form your analysis and your opinions?

A. So I looked at quite a large volume of information. It started off with the bank statements and the credit card statements that were produced by the Government. That would have been the initial documents I would have looked at.

I looked at tax returns that were produced by Mr. Cupersmith, who testified here. I looked at the general ledgers and other business documents that were produced by the company, including leases and some of the agreements. I looked at records that were maintained by the company related to the Alafaya Trails project as well. There were others, but those would be the main documents.

Q. And what were the sources of -- you described a lot of the information. What were the sources of that information?

A. So the bank statements and the credit card statements were produced by the Government. There were also additional credit card statements that I got directly from the company that had certain notations on them that I also considered. These were contemporaneous records.

Q. Who made those notations on those credit cards?
A. Ms. Jeanette Gonzalez.
The documents that were maintained for the project I also reviewed. When I say: "The project," I mean the Alafaya Trails project. And then there were some other documents that were given to me involving the leases and other documents that I reviewed as just part of my overall analysis.
MR. CAVALLO: Could you please -- this is in evidence. Could you please put up B-8, Defense B-8. B-8.
BY MR. CAVALLO:
Q. Is this an example of one of the marked-up AmEx expenses you received from the company?
A. Yes. This is an April 2020 American Express card statement.
MR. CAVALLO: You can take it down.
BY MR. CAVALLO:
Q. What was your understanding of what -- the notations that were on those AmEx statements?
A. So per my discussions with Ms. Gonzalez, she would go through the American Express statements each month, and she would identify on the face of the document whether they were a business expense or a personal expense. Normally, when it was a business expense, there would be a notation as to what it was for coding in the QuickBooks records. If it was a personal expense, it would just have an X next to it.

Q. And did you just rely on what was on those statements or did you do further analysis beyond that?
A. It was a starting point. So there would have been information within the QuickBooks that I would have looked at. The QuickBooks were the companies' accounting system that they used, and they maintained all of their financial reporting through QuickBooks. So I would have seen how things were classified in the QuickBooks. I would have looked at these American Express card statements.

I did analysis of the information just to look for consistencies. Occasionally, there may be a situation where you might see a vendor, and eight times it would be a business expense and one time it would be personal or vice versa. So I would ask questions about why there might be that difference.
Q. That's my next question. Did you speak to anyone at the companies regarding the documents you reviewed?
A. Yes. I spoke with Ms. Gonzalez and I also spoke with Mr. Sheppard.
Q. And everything you've just described, the documents you've reviewed, the conversations you've had, is that the type of information that's typically and reasonably relied on by a forensic accountant?
A. Sure. Sure. I mean, every case is different. It's like peeling an onion. You have to figure out what's available and what you need to see. But bank statements are a starting point

for any forensic analysis. And then to the extent that we can get company records like QuickBooks, it's always information that we ask for. And it was helpful that the QuickBooks records were generally consistent with what I saw in the bank statements. What I mean by that is you could look at all of the ins and outs of the bank statements, deposits and withdrawals, and you would see those same transactions in the QuickBooks.

We would typically follow up that type of analysis with questions of management, and then supplement it with additional information based on each case.

MR. CAVALLO: Could you put on the screen what's in evidence as Government Exhibit 41-5.

BY MR. CAVALLO:

Q. Mr. Bouchner, you were present for the testimony of the Government's FBI witness, correct?

A. Yes, I was.

Q. Have you been present every day of trial?

A. Every day.

Q. You've heard all of the testimony?

A. I have.

Q. Do you recognize this document?

A. Yes, I do.

Q. What's your understanding of what the FBI witness did to prepare this document?

MS. MARTINEZ: Objection, Your Honor.

THE COURT: And the basis?

MS. MARTINEZ: This witness's understanding of what another witness testified to is irrelevant.

THE COURT: It's with regard to his review of the exhibit. So the objection is overruled. I'll allow it.

BY MR. CAVALLO:

Q. Go ahead, Mr. Bouchner.

A. So this was an exhibit which looked at three bank accounts, one bank account for each of the three companies that we've been talking about. As it says at the top of the document, it covered the period of May 1st, 2020, through October 20th, 2021.

And as I reviewed this document and heard the testimony of the FBI witness, this first page looks at all of the inflows of cash into these three bank accounts, and those are organized by some categorization that he had done. And then the next page has all of the outflows also categorized.

Q. As it states at the top this was a summary, correct, the summary of money flow?

A. Yes. It was a summary exhibit.

Q. How does your analysis differ from Mr. Hysa's? And you can use this chart as an example.

A. Sure. So I think there were a couple of differences besides a slight difference in the date range, which I'm sure we'll talk about. Number one, this was limited to three bank accounts. I looked at all of the bank accounts that were used for the -- by the three companies.

Q. You prepared similar summaries -- summaries for time periods, not summary charts but summaries of your analysis for time periods, correct?

A. Yes. I looked at a slightly longer time period, but not too different from what Mr. Hysa had used. But I included more accounts for these companies.

Q. And again -- and please -- how else was your analysis different?

A. This was looking solely at the bank activity. I also incorporated the other sources of information that I had available to me, including the American Express notations, the QuickBooks information, conversations that I had with management, and other information.

Q. And using -- does your analysis review business expenses and personal expenses?

A. Yes, it does.

Q. And giving an example on this chart, how is that different from what Mr. Hysa did?

A. So if we look at the first line, there's $735,571 of payments made out of the bank accounts to credit cards. This lumps all of that together into a single number over that time period. I would have looked at the bank activity, as well as the underlying credit card statements, in order to be able to characterize them as personal or business. And in this case it's all grouped together.

And you can go down this list. I see on here the IBERIABANK mortgage payments. That would have been distinguished as a personal payment in my analysis. You don't see that type of differentiation in Mr. Hysa's schedules.

Q. And I believe you said another difference was this only looks at three accounts, correct?

A. That's correct.

Q. Why was it important to your analysis to look at all of the accounts that were in use for the periods you reviewed?

A. I was interested in knowing what was happening for all of the bank activity for these companies, not just in the three accounts that directly received the government funds. So in order to be able to understand the totality of everything to have a complete analysis, it was important to be able to look at not only these accounts but other accounts that had activity for the three companies.

Q. Does that relate in any way to the concept of fungibility or interchangeability of money?

A. Yes. Of course.

Q. In very simple terms, can you please explain what fungibility of money means.

A. So fungibility would be -- I think the best synonym would be interchangeability of money that you can exchange a hundred dollar bill with another hundred dollar bill and you can't tell the difference. I could probably talk about things that aren't fungible --

Q. Well, give us some examples of things that are not fungible.

A. So if you think about a car, you have different makes and models. You even -- if you have the same make and model of a car, they all have their own individual vehicle identification number so you can look and track each car individually and cars are different.

We all carry cell phones. An iPhone is different from an Android phone. And even the same iPhone has a different serial number. Those are distinct individual pieces or items.

Cash is cash. It doesn't really matter whether it's a hundred dollars in Bank Account A or Bank Account B. It's a hundred dollars is a hundred dollars.

Q. Can you give us again another simple example to demonstrate how cash is different in that respect.

A. Sure. Let's assume that I -- I'm having dinner with my grandmother, and she says: "Here's a hundred dollars. I'd like you to go out and buy a video game," and she gives me a hundred dollar bill. And I walk down the street, and I'm going home after I thank her for the nice gift. And I walk into a grocery store, and I have to pick up some groceries for the week, and I take that hundred dollar bill and I use it to purchase groceries. Then I go home and I go onto Amazon and I find a video game that's exactly what I like, and it costs a hundred dollars, and I put that on my debit card.

So even though I took my grandmother's hundred dollar bill, used it to buy groceries and then used a different hundred dollar debit card to buy the video game, I still did exactly what Grandma would have wanted for the money. It doesn't really matter that it was a different hundred dollars. A hundred dollars is a hundred dollars.

Q. Why for your analysis did it also -- was it also important that you look at these three companies collectively?

A. Well, for a couple of reasons. Number one, because cash is fungible, monies get transferred from different accounts to different accounts. Number two, when I looked at the companies' historical activity, we see lots of intercompany transfers where monies move around for different purposes. So historically you saw those types of transactions. So it was necessary really to be able to look at all of them collectively.

Q. And in your experience, in your expertise, is that unusual?

A. No. Especially for small businesses. That's often the case. And even more so involving real estate companies. As some of the witnesses testified, it's very common for every individual real estate project to be set up as an individual

LLC or other -- or a partnership.

So what I often see in -- among many of my clients are that monies will be spent where the cash is sitting. So if a piece of real estate is sold, and there's a lot of cash there, that cash may be used to be able to fund the needs of other entities that may not have those higher cash balances. And then the accountants come in and they straighten it up for the accounting records. But the cash is basically fungible, so it's able to be used where the money is.

Q. Did you hear any testimony during the trial that impacted your opinion in this regard?

A. Yes. There has been various testimonies offered by different witnesses that talked about fungibility of funds. Yes.

Q. Was there any testimony you heard regarding commingling of funds, segregation of accounts?

A. Sure. So when I listened to the SBA witnesses, Ms. Harris, Mr. Motes, there were some of the banking experts or the banking witnesses who were asked questions about segregation of funds. There was no need to maintain government funds in segregated accounts.

There were questions about commingling. There was pretty consistent testimony that it was okay to commingle funds together. In fact, it was often expected. There was questions about the need to -- or the need not to trace funds. And there was --

MS. MARTINEZ: Objection to the narrative, Your Honor.

THE COURT: Sustained.

BY MR. CAVALLO:

Q. Mr. Bouchner, if it wasn't about tracing, what did you have to show regarding the use of the government loan funds?

A. The important thing is that the amount of the monies that came in as government loans were used for the purposes required under each of the loan programs. It's the amount of the monies, not necessarily the tracing of how those funds were used.

Q. Did you prepare any charts to assist in the presentation of your expert testimony today?

A. Yes, I have.

MR. CAVALLO: Brian, could we just scroll through those quickly starting with Z-1, and Z-2, Z-3.

It should not be up for the jury yet. I apologize.

THE COURT: Yeah. Let's not put it up on the jury's screen, please.

MR. CAVALLO: Z-4, Z-5, Z-6, Z-7, Z-8, Z-9, Z-10, Z-11, Z-12, Z-13, Z-14, Z-15.

BY MR. CAVALLO:

Q. You prepared these charts, Mr. Bouchner?

A. I did.

MR. CAVALLO: I would ask these charts be shown to the jury during Mr. Bouchner's testimony as demonstrative aids. And the Government -- we've conferred. There's no objection.

THE COURT: All right, then.

MR. CAVALLO: We'd ask that they be admitted as demonstrative aids.

MS. MARTINEZ: No.

THE COURT: Are you seeking to admit them or just for demonstrative purposes?

MR. CAVALLO: Demonstrative purposes.

THE COURT: All right, then. Solely for demonstrative purposes.

MR. CAVALLO: Let's put up Z-1.

BY MR. CAVALLO:

Q. You're familiar with this chart, Mr. Bouchner?

A. I am.

Q. What does that chart show regarding your analysis?

MS. MARTINEZ: Counsel, may I ask that you repeat the designation that you're giving because I only have them numbered 1 through 37.

MR. CAVALLO: Of course. No problem. This is Z-1.

BY MR. CAVALLO:

Q. Mr. Bouchner, what does this chart show regarding your analysis?

A. So this chart is the source of funds that came in over the 20-month period May 1st, 2020, through December 31, 2021.

Q. And actually, I'll stop you. Could you explain what the significance of that period is.
A. Sure. May 1st was the date that the funds were received for the first PPP loan. And December 31st, 2021, was a logical break. I wanted to be able to cover a period to see how those funds were used as part of my analysis, and I took the year-end of 2021 as a reasonable time.
Q. And what did your analysis show about the amount of funds from non-government loan sources during this period?
A. So in total, there was approximately $4.34 million of monies that came in to the companies' bank accounts from sources other than the government loans.
Q. And how much in government program funds?
A. There were $893,000, approximately, for the government loans.
Q. How did the -- for this period of time, how did the amount of funds from non-government sources compare to the amount of funds from government programs?
A. It was approximately four to one. So about -- approximately 20 percent of the monies that came in came from the government, and approximately 80 percent, give or take, came from non-government sources.
MR. CAVALLO: Put up Z-2, please.
BY MR. CAVALLO:
Q. Mr. Bouchner, you're familiar with Z-2?

A. Yes, I am.
Q. And could you tell us what this chart shows, focusing on the header.
A. Sure. So unlike the first chart, which only looked at the sources of funds, this chart looks at the sources and the uses of funds over the exact same time period for the same three companies.
Q. The top portion, the funds from non-government sources, we just covered that, right? That was in the Z-1 chart?
A. Yes. From the 4.3 million to the 5.23 million. That was basically the last chart that we looked at.
Q. Going to the next set of line items down, the business expenses, could you explain what the chart shows.
A. Yes. So if we look at that middle section, the one that starts with: "Business Expenses Paid From Company Bank Accounts," those four line items identify sources -- or I should say uses of funds by the companies to pay business expenses.
Q. And what was the total amount of business expenses shown in your analysis for this period?
A. I'll just talk in terms of rounding. Approximately $4.75 million.
Q. And how does the total amount of business expenses for this period compare to the total amount of government program funds that were received for this period?

A. So when you look at the 4.75 million and compare that to the $893,000 of government loans, it's approximately five to one, five times as much.

MR. CAVALLO: Could you go to the next category down, the personal expenses.

BY MR. CAVALLO:

Q. And again, just explain what this shows.

A. Sure. When you look at the bottom, you see total personal expenses. And the total personal expenses that were paid out of the company's bank accounts was -- well, bank accounts and American Express purchases, was approximately $813,000.

Q. And how do the funds from non-government sources compare to the total amount of personal expenses for this period of time?

A. It would have been a little bit more than five to one. So --

Q. Could you just point us to which two numbers you're comparing on here.

A. Sure. If we look at the very top line, the "Funds From Non-Government Sources," there were approximately $4.3 million of funds that came in from non-government sources, things other than the government loans, and you compare that to the 813,000 in personal expenses, and you can see that five-to-six-times margin.

Q. Fair to say there was enough non-government funds for this period of time to cover the personal expenses five to six times over?

A. Yes. That's correct.

MR. CAVALLO: Could you keep Z-2 on the left-hand side and put up Z-3 on the right.

BY MR. CAVALLO:

Q. Could you tell us what Z-3 on the right shows.

A. So Z-3 is looking to be able to explain that first line in the middle section, the "Business Expenses Paid From Company Bank Accounts." So when we look here, this includes everything that came from the companies' bank accounts other than the American Express, which I treat separately. But this basically is a grouping by category of all of the amounts that came from the companies' bank accounts that were used for business expenses.

Q. I'd just like to go through a few of these. The first line item, "Interest and Other Payments for Basis Loan," can you tell us what this line item was in your analysis.

A. Yes. As was testified in trial, Basis Capital provided the funding for the Alafaya Trails property and there was a mortgage on the property. And just like a home mortgage, there are times where there's interest that's paid on it, as well as real estate taxes and insurance, reserves. Those amounts were paid for out of the companies' accounts every month. So collectively those amounts that went to the mortgage was approximately $2.12 million.

Q. And approximately how much of that is mortgage interest?

A. Mortgage makes up the bulk of it. Approximately 80 to 85 percent.

Q. How about the next line item down, "Payroll to Individuals"? How did you -- how did you do this calculation or analysis?

A. This would have been monies that were paid to workers, individual workers, as opposed to companies. So that would have been by going through the bank statements, looking at the general ledgers, and being able to -- in discussions with Mr. Sheppard, as well as looking at information that came from the project management records, to be able to identify individuals that were working on the property.

Q. And why did you refer to it as payroll?

A. For a couple of reasons. When you look on the face of the general ledger, you would typically see payroll referred to in the memo item. So when you look at QuickBooks, there's a memo field and it gives a little description about each transaction, and that gives a little bit of insight into what was being thought of when they were being accounted for by the companies' accounting people.

There were -- when you looked at copies of canceled checks, it would say: "Payroll" on the canceled check. When I looked at the records that came from the project management information that Mr. Vasilas maintained, those documents also would identify individual workers, many of which overlapped in some ways with amounts that were paid out of the bank accounts.

So with all of that information, I did my best to be able to go through and categorize those that were workers.

Q. And skipping a few lines down, "Contractor Companies." Can you explain the difference between payrolled individuals and payments to contractors.

A. Yes. Contractor companies, as its name implies, would be for people that did -- companies that did flooring work. They may have done work to the HVAC, painting, electrical work. These would have been companies that would have received those checks. Even if they provided workers, it would have been going to the company rather than to the individuals.

Q. And again, just skipping some more lines down, the line item "Cash Withdrawals for Burlington Build-Out," could you tell us what that includes.

A. Yes. There were monies that were used, especially during the COVID period, for petty cash because banks were closed. You saw a little bit of an uptick in that where $3,000 might be taken out every couple of weeks, and that would be used for various expenses that would be paid for on the project site. So unlike some of these others where we saw a specific payee, they were cash withdrawals, but they were categorized in the company's QuickBooks records as petty cash for Burlington build-out.

Q. It's not your testimony that there was only 26,000 in expenses for Burlington, correct?

A. No. No. Many of these items on this chart here on the right are Burlington build-out related. Those were just the cash withdrawals.

Q. We're showing on the left-hand --

MR. CAVALLO: Could you go to Bates 1058, Defendant's Exhibit B-19 in evidence.

And Brian, could you zoom in on the bottom where it says: "LL Work for Tenant."

BY MR. CAVALLO:

Q. Your line item for cash withdrawals for Burlington build-out, are those reflected in the QuickBooks?

A. Yes. I mean, this is for the period shortly before I began on May 1st.

MS. MARTINEZ: Counsel, is this an exhibit in evidence?

MR. CAVALLO: Yes. Through the Jeanette certification.

MS. MARTINEZ: B-19?

MR. CAVALLO: Yes.

MS. MARTINEZ: And is there a particular page in B-19?

MR. CAVALLO: Yeah. We're on Bates Number 1058.

MS. MARTINEZ: And is there a particular company that you're discussing?

MR. CAVALLO: This is a -- I believe it's the 2020 QuickBooks for -- could you X out and go to the top of the record.

MS. MARTINEZ: So QuickBooks usually goes by account.

MR. CAVALLO: It's at the top. I'm just -- go to the first page, please.

BY MR. CAVALLO:

Q. Mr. Bouchner, for the record, what company does this QuickBooks relate to and for what period?

A. This is for the year 2020 from January through December for HM-UP Development Alafaya Trails.

MR. CAVALLO: Could you go back to 1058, please.

Actually, could you go a few more down till we get to the period of time Mr. Bouchner is talking about.

A page down.

Zoom in on the bottom.

BY MR. CAVALLO:

Q. Mr. Bouchner, do you see any -- any of the expenditures you classified as cash withdrawals for Burlington build-out here?

A. Sure. So I'm looking -- the middle of the page, there's -- the first transaction on June 3rd, it says: "Cash," and --

Q. There are a lot of other expenditures here, correct?

A. Yes. There are payments to contractors, payments to individuals.

Q. How did you handle those expenditures in your analysis?

A. So if there was an amount that would be -- so I'm looking at April 22nd. It's outside of my time period, but the example is the same. There's somebody where it says: "Payroll labor drywall." If it was in the time period, I would have taken that payroll and I would have included it as part of payroll.

If we look and see that there were amounts for "Finish jump pump Burlington" for AMCA Plumbing Corporation, that would have been a contractor payment. So whatever it was, it would have been categorized as inconsistent with that.

Q. For the record, could you please just tell us the total amount of business expenses from bank accounts for this period of time on the right-hand side.

A. Out of the bank accounts, there was $3,848,000, and I'll round. That would exclude the American Express-related disbursements.

Q. And where can we find that line item on your overall summary chart on the left?

A. It's the first line in the middle section. You can see the three million eight forty-eight in both places.

Q. Thank you.

MR. CAVALLO: Could you please put up Z-4 on the right. Z-4.

BY MR. CAVALLO:

Q. Could you please explain what's being shown in this chart as it relates to your analysis.

A. So as also was testified to over the course of the trial, Mr. Sheppard's American Express card was often used for the payment of business expenses. So I had done a detailed analysis, as I alluded to before, of the American Express statements, and distinguished those that were business in nature from those that were personal. And what you see here is a summary grouped by the vendor or the merchant that received -- for which those goods or services were purchased, and that is on the right side here.
Q. In categorizing these, did you also perform any reasonableness analysis?
A. Yes. Yes. So what I would do is -- you know, I gathered all of the information, I grouped it by vendor name, I looked at the information and how it was categorized on the company's QuickBooks records. It would typically indicate whether it was a business expense or not. And then I did a reasonableness review by going through each of the vendors to make sure that there was some understandable reason why it would be a business expense. So...
MR. CAVALLO: Can you scroll to the very bottom for the total on the right-hand side.
BY MR. CAVALLO:
Q. What was the total amount of business expense charges for this period?
A. Approximately $476,000.

Q. Can you explain why that 476,000, approximately, in business expense charges on the AmEx is not seen dollar for dollar in the second line of your summary chart?
A. Because not every dollar was paid for using the three companies. There were some other payments. There were also some small differences between the beginning balance and the ending balance. So I needed to make an adjustment based on what was actually paid by these companies.
MR. CAVALLO: Could you put Z-5 on the left-hand side.
BY MR. CAVALLO:
Q. And did you prepare a chart to show your analysis as far as allocating these charges?
A. Yes, I did.
Q. Is that shown in Z-5 on the left?
A. It is.
Q. Could you explain here the allocation process you went through.
A. Sure. Over the course of this entire time period, there were $831,000 in charges to the American Express card. 476,000 were classified as business related, and you can see that on the left side. That made up 57 percent of the $831,000 in charges.
Q. And can you explain the right-hand column at the top.
A. Yes. That's where I looked at the total, the 831,772. And I looked at the 476,000 that was business. That was 57 percent

of that total. The 355,000 of personal charges made up 43 percent of that total. And if you add the 57 percent plus the 43 percent, you get the full hundred percent.

Q. What did you do with those percentages?

A. Well, the next thing would be to look to see how many -- how much of the payments for those American Express card charges were made from the three companies that I'm looking at as part of this analysis. And I was able to identify looking at the bank statements $765,000 of payments out of these companies' bank accounts.

So by taking that 57 percent and multiplying it by 765,000, that would result in $438,474.52 that you see at the bottom. So I reduced the amount of expenses that I'm including in my analysis from the 476,000 in total charges, and I did an apportionment to the 438,000 reducing it for that difference.

Q. And the numbers at the bottom there, the 438,000 in business -- payments to American Express allocated for business, and the 327,000 for payments to American Express allocated to personal, those are the figures that appear on your overrule summary chart, correct?

A. That's correct. Yes.

MR. CAVALLO: You can put Z-2 back up on the left.

MS. MARTINEZ: Counsel, the one that you looked at on the left, that was Z-5?

MR. CAVALLO: Z-5.

Could you please put Z-6 up on the right.

BY MR. CAVALLO:

Q. The next line item down on your overall summary chart, "Tenant Improvements," could you explain what that is, Mr. Bouchner.

A. Yes. I believe this was also testified to over the course of the trial, but there was an amendment to the Burlington lease. The project was not delivered in time without incurring a penalty that Burlington would have been entitled to. So there was an amendment that actually provided a credit for what's known as liquidated damages that went to Burlington and was dealt with as a credit back to Burlington from HM-UP.

Q. Are you familiar with the document X-43, which is in evidence -- Defendant's X-43, the second amendment to the lease on the left-hand side of the screen?

A. Yes, I am.

Q. And can you please just tell us where in this document you factored in the lease to your analysis.

A. So if you look at the bottom of the page to the left, you'll see where it says: "Roman numeral III, Outstanding Amounts." And at the very bottom, they identify $1,166,000 as the settlement amount. In other words, HM-UP Alafaya Trails had to pay a penalty, in essence, of 1,166,000 because it was unable to deliver the property in the summer and didn't -- it didn't happen until November.

Q. And if you scroll further down on the lease to the next page, how was that over-$1.1 million penalty going to be paid by the companies?

A. So it would be paid over -- it was going to be paid out over 60 months. If you take the $1,166,000 and divide that by 60 months, you get $19,433.33 each and every month. So if you look on the right side where I prepared the chart, what you see there is -- for the 14 months that I'm looking at, you see that $19,433 cost, that penalty, for each of those months, which totaled $272,000.

Q. The penalty to the companies was in reality much higher than 272,000, correct?

A. Yes. In fact, I excluded approximately $800,000 from my overall calculation of expenses because I limited it only to the period that I'm looking at.

MR. CAVALLO: Could you put Z-2 back up on the left.

BY MR. CAVALLO:

Q. And again, just to point out where the two -- show us where the 272,000 in -- pursuant to the second amendment is on your overall summary chart.

A. It's the third line in the middle section.

Q. Why did you include this as a business expense?

A. Because it actually was an expense. It was a settlement payment that needed to be made and paid out by HM-UP. It was treated not as an out-of-cash payment, so it doesn't get reflected in the bank accounts. But the way it worked was it was an actual reduction in the rent. But it is an expense nonetheless that needed to be included because the company received approximately $19,400 less each month than they otherwise would have if it wasn't for this penalty.

MR. CAVALLO: Could you please put up Z-7 on the right-hand side.

BY MR. CAVALLO:

Q. Could you please explain what's being shown in this chart, and again how it related to your analysis.

A. So on this chart, this pertained to the -- my review of the project management reports and records that would have included copies of checks, copies of credit card statements, individual receipts, along with lots of Excel schedules that were maintained by Mr. Vasilas. There were roughly three volumes of information that had been gathered, and I went through that information in order to be able to put this summary chart together on the right-hand side that captured all of that information.

Q. The first line item, "Payroll to Individual Workers," could you tell us how you calculated that.

A. Yes. By looking at all of the individuals that were identified on the spreadsheets, looking at checks, I identified those payments that were going to individuals who were on the property, and they were identified as such on those documents.

Q. These were individuals who were represented to have been paid by Mr. Vasilas, correct?
A. That's correct.
Q. Can you please just explain for us in a little more detail the bottom line item, the "Less Reimbursement of Project Manager Expenses."
A. Sure. So when I looked at the roughly $280,000 in total costs that I identified by going through all of these records, there were certain expenses that were paid by the company to Mr. Vasilas as reimbursement for certain costs, and I didn't want to double count. If I included all 280,000, even though some of it was reimbursed, I would have included an extra $89,500 that would have doubled up on it. So in order to avoid that double counting, I reduced on the bottom as a credit.
Q. If these costs were -- business expenses were paid by Mr. Vasilas, why are you crediting them as business expenses of the companies?
A. So pursuant to my discussions with Mr. Sheppard, we discussed a loan that Mr. Sheppard had made to Mr. Vasilas and that there was an agreement that he would pay for certain costs out of his own pocket or through his company Diamonds Forever Miami, and that would satisfy the obligation. So in effect -- go ahead.
Q. I just want to make sure I'm clear for the record. The costs that were in this chart, these were paid by Mr. Vasilas

from his own pocket, his own company, as opposed to the companies, correct?
A. That's right, except for the $89,000, which I credited.
Q. And I'm sorry I interrupted you. So I'm -- the basis to include these as business expenses was why?
A. Because they were related to the project. They were material costs, payroll to individual workers, amounts paid to other contractors. All of these things were amounts that were identified by Mr. Vasilas on the reports that he provided to Mr. Sheppard. And he paid for them out of his own pocket, so they don't appear in the bank accounts. So if I didn't include them, I would have left off those real expenses of the project that were treated as a satisfaction of a personal obligation, instead of coming out of the bank account.
Q. When you say satisfaction of a personal obligation, you're referring to a loan of some kind?
A. That's my understanding, yes.
Q. And the loan -- Mr. Vasilas owed money to who?
A. To Mr. Sheppard.
Q. And did you see any evidence of any kind of loan of that nature in any of the records you reviewed?
A. There were references to a loan in the documentation.
MR. CAVALLO: Could you put up on the left-hand side X-10.

BY MR. CAVALLO:

Q. So this is Defendant's Exhibit, in evidence, X-10. Could you please identify this, Mr. Bouchner? Are you familiar with this document?

MR. CAVALLO: And could you scroll through, Brian.

THE WITNESS: Yeah. Yes. This was among the documents that were produced as the business records. You can see checks, and Excel schedules, and other information that was produced.

MS. MARTINEZ: Counsel, I understand that this is an exhibit that's been admitted.

MR. CAVALLO: X-10.

MS. MARTINEZ: And if you're showing something to the jury, could we say that Bates label you're showing.

MR. CAVALLO: Yes. We're showing right now Bates Label D, for Defendant, 001170.

BY MR. CAVALLO:

Q. Mr. Bouchner, is this one such business record of the company that supported the loan you discussed with Mr. Sheppard?

A. Yes.

Q. Could you explain where that is on here.

A. So if you look towards the top, it says: "Jeff" on the left and "Loan" in the notes, and it makes reference to a balance of $185,987.77.

Q. Was that consistent with your discussions with Mr. Sheppard?

A. It was actually less than the original 400,000 that he was talking about. This was a reference that I saw to the loan in here.

THE COURT: Mr. Cavallo, the jury is in need of a break.

MR. CAVALLO: Oh. Yeah.

THE COURT: All right. Ladies and Gentlemen, let's take a 10-minute recess.

COURT SECURITY OFFICER: All rise for the jury.

(Jury not present, 2:24 p.m.)

THE COURT: All right. We're on a 10-minute recess.

MS. WEINTRAUB: Judge, before you take a break, I'm just asking for scheduling purposes, and want to advise the Court I was right for once during this case. We are going to rest after Mr. Bouchner. We did get him on before one or around one. We're going to rest. I'd like to know what's going on with rebuttal with --

THE COURT: All right. That's fair.

Ms. Jimenez, Mr. Bouchner is the last witness. Do you intend to introduce any rebuttal evidence?

MS. JIMENEZ: Yes, Your Honor. We intend to call Mr. Alex Zaslow.

MS. WEINTRAUB: Are we going to get it narrowed down now for the rebuttal? I mean, we have no idea -- Zaslow -- so the Court remembers --

THE COURT: All right. Hold on. Why don't we -- Mr. Bouchner, why don't you go ahead and step outside.

MS. WEINTRAUB: Judge, we're also trying to determine if it's proper rebuttal because we believe it is not going to be, and I want to just remind the Court respectfully that Zaslow could testify to a plethora of hours, leading to hours and hours of testimony, which is a mess.

I mean, when we think of Zaslow, he's Neal Cupersmith's partner. He's the one that actually did all the tax returns for the past seven years. He's the one that they should have called in their case in chief. Instead, they chose to call Neal Cupersmith --

THE COURT: All right. So obviously Mr. Zaslow is going to be rebutting Mr. Bouchner's testimony. Is that correct, Ms. Jimenez?

MS. JIMENEZ: Well, I don't know at this point if I --

THE COURT: What would be the purpose of the rebuttal?

MS. JIMENEZ: So the main purpose of the rebuttal, Your Honor, is twofold. There was testimony by the Defendant that Mr. Cupersmith and Mr. Zaslow gave him advice regarding the government loans that he was applying for, and companies that should apply, and the year that he should apply for, and those kinds of things that were testified to by the Defendant, and they have emails where they were setting up the conference call. And so that's going to be a portion of his testimony.

There was supposed business records introduced that were W-2s, suggested -- and suggested by the Defendant that this -- these were the tax filings, sort of conflating them with the 941s. He's going to testify about that.

And I don't know if there was something here in addition that he would be addressing, but that is the thrust of it. It is rebuttal. He's not going to be going over tax returns that Mr. Cupersmith went over and those kinds of things.

THE COURT: All right. Then certainly the Court can be in a position to determine whether it's true rebuttal. Okay?

All right. I'll see you back here in 10 minutes.

(Recess from 2:28 p.m. to 2:42 p.m.)

THE COURT: All right. Welcome back.

Are we ready to continue?

MR. CAVALLO: Yes, Your Honor.

THE COURT: See if they're all there.

Thank you.

(Pause in proceedings.)

MS. MARTINEZ: How much longer do you think?

MR. CAVALLO: I'm more than halfway through.

MS. MARTINEZ: Okay. So maybe?

MR. CAVALLO: An hour, 45 minutes.

(Before the Jury, 2:43 p.m.)

THE COURT: All right. Welcome back, Ladies and Gentlemen.

Please be seated.

And we'll continue with the testimony.

MR. CAVALLO: Can you put the same document up. On the left-hand side, put up Z-2.

BY MR. CAVALLO:

Q. Mr. Bouchner, were your conversations with Mr. Sheppard one of the reasons you were comfortable including this 191,000 on your summary chart, even though there was only -- we only saw 185,000 in the project reports?

A. Yes. It was something I considered.

Q. Why is that?

A. Well, the difference between the 185, which was the balance when that chart was prepared, and the 191 at least provided me some confirmation that there were loans arranged between the two men. And Mr. Sheppard's further discussion also helped at least understand the context of the relationship.

Q. And could you give us just a simple example in the context of a loan and why this is a business expense, given your information regarding the loan?

A. Sure. Well, let's say that you owed me a hundred dollars and I owed Ms. Weintraub a hundred dollars, and I said: "Well, why don't you pay her on my behalf." Well, I may not have actually paid that hundred dollars from my pocket and you did, but at the end of the day she still gets paid. I'm not getting the hundred dollars from you, so I'm getting less than I would have gotten, and collectively it all makes sense. I think that's what was happening here.

MR. CAVALLO: On the right-hand side, could you please put up Z-8.

BY MR. CAVALLO:

Q. Mr. Bouchner, can you explain what's being shown in this chart as it relates to your analysis.

A. Yes. This is a summary of the payroll that includes actual payroll amounts of $677,000, approximately, that were paid out of the companies' bank accounts, an additional $96,000 of health insurance that would have been paid to -- paid on behalf of the companies' workers, as well as 153,674 of payroll that was paid for through Mr. Vasilas at the project worksite.

Q. Given your analysis for this time period, what is the total amount of payroll that was paid by these companies?

A. Collectively, by including these three sources of payments, approximately $927,000.

Q. Can you please tell the jury how that $927,000 compares to the total amount of government program loans.

A. For all six loans, it would be $893,000. So this was approximately $30,000 more.

Q. Payroll exceeds the total amount of the loans, correct?

MS. MARTINEZ: Objection. Argumentative.

THE COURT: Sustained.

BY MR. CAVALLO:

Q. Payroll exceeds the total amount of the loans, correct?

MS. MARTINEZ: Leading.

THE COURT: Sustained.

BY MR. CAVALLO:

Q. Mr. Bouchner, the total amount of the loans in your summary chart, that includes EIDL, correct?

A. Yes, it does.

Q. How does the payroll you calculated compare to just the PPP loans for this period?

A. Approximately twice as much.

Q. Payroll is twice as much as in the PPP loan amount, correct?

A. The payroll is approximately -- the $926,000 is approximately a little bit more than twice as much as the $447,000 or so of PPP loans.

Q. Could you please tell us where each of -- in the right-hand chart, could you tell us where each of these line items can be found in your overall summary chart.

A. Sure. The payroll and the insurance health would be contained in the 3,848,000. That's the first line of the middle section on the left. And the 153,764 would have been part of the 191,000, which was the fourth line in that middle section.

MR. CAVALLO: You can take down the right-hand side and put up Z-9.

BY MR. CAVALLO:

Q. As far as Defendant's Z-9, can you tell us what this chart shows?

A. Yes. This is the personal expenditures from the bank accounts. Those would have been the monies that were paid from the companies' -- all three companies' collective bank accounts for items that were not business expenses, and I classified them as personal in nature.

Q. Starting with the first line, "Credit Cards," what does that include?

A. So in addition to the American Express card, which I analyzed separately because of the volume of all of the transactions, there was also a Discover Card and a Barclays card. These represent a hundred percent of the charges on those two cards. There may have been some personal -- excuse me -- some business-related expenses in there, but for conservatism, since the majority of them were personal, I included them entirely in this schedule.

Q. The entire amount of those credit cards you classified as personal?

A. That's right. I didn't do a separate line-by-line analysis. I just included them all.

Q. How about the next line item, "Loan Payment IBERIA," what does that -- based on your analysis, what was that?

A. These would have been the monthly payments that were made on Mr. Sheppard's mortgage for his home.

Q. Taking the "Loan Payment IBERIA" as an example, how were these personal expenses handled in the QuickBooks of the company?

A. Generally, they were treated as equity distributions, like a dividend. Mr. Sheppard was not taking a salary, but he was having the company make certain payments on his behalf. So if you look at the QuickBooks information, and you look at the equity account -- I know I'm getting technical, but instead of showing it as an expense of the business, it would show up as a distribution or, like I said, a dividend.

Q. Instead of being shown as a business expense, it was handled as an equity distribution?

A. In most cases, yes.

Q. Skipping to "Loan Payment Via One Florida Bank LOC." Can you tell us what that line item is.

A. Yes. There was just under $600,000 of monies that had been contributed to the business through the personal line of credit. Mr. Kallman talked about that in his testimony. Some of those funds were actually repaid back to Mr. Sheppard, and that $102,000 was the monies that went back -- I treated that

entirely as a personal expense.
Q. Were those payments to Mr. Sheppard or to One Florida Bank?
A. Actually, it was to One Florida Bank on behalf of both Mr. Sheppard and Mr. Kallman, who had the line of credit.
Q. And why did you treat those as a -- you treated those as a personal expense?
A. Yeah. I treated them as a personal expense because those were monies that were part of the sources of the funds that came in to them through their line of credit. And because it was repaying back to them, I felt that it would be appropriate and, you know, arguably conservative by treating it entirely as personal.
Q. And again, just to go down to the total, the total amount of personal expenses paid?
A. Approximately, $486,000.
Q. The One Florida Bank repayment, that -- the way you handled it, it was treated as a reduction in equity as well?
A. That's correct.
MR. CAVALLO: You could take down the right-hand side and pull up Z-10, please.
BY MR. CAVALLO:
Q. Can you please explain what the right-hand chart shows regarding your analysis of AmEx.
A. Sure. So prior to the break, I went through a overview of the American Express business expenses. This is doing the

exact same thing that I had done before, but now these are the items that were categorized as personal expenses in nature.

As I had mentioned, Ms. Gonzalez had identified on the face of the American Express statements what was personal and what was business. I summarized all that information and grouped it by the merchant that received the payment or where the purchase was made. And then I sat down with Mr. Sheppard and -- to go over any questions that I had to make sure that those categorizations were reasonable.

Q. How did you handle the personal expenses of Mrs. Jennifer Sheppard and Jordan Sheppard?

A. So they each had their own American Express card. So those were not reviewed on a line-by-line basis, like I did with the Discover and the Barclays Card. The entire amount of both Ms. Jennifer Sheppard and Ms. Jordan Sheppard's spending was captured and put here as personal.

Q. You gave no credit as business expenses for any of these charges, correct?

A. Yes. I made the assumption that there was no business purpose, even if there may have been.

Q. And that would include any jewelry purchases that were made on either of those accounts, correct?

A. The entirety of everything that was on the American Express statements over this 20-month period.

MR. CAVALLO: Scrolling to the very bottom of the chart on the right, please.

BY MR. CAVALLO:

Q. The total amount of personal expense charges for this period was what, Mr. Bouchner?

A. Approximately $355,000.

Q. And did you have to go through the same process of allocating those from charges to payments?

A. Yes. As we discussed when we looked at that allocation chart, it was the same process. This was just the portion that would be attributed to personal items.

Q. On your summary chart, Z-2, could you just point out where the allocation is shown there.

A. Sure. When I reduce it for the difference between the charged amounts and the purchased amounts, it reduces the total that gets allocated in this case from 355,000 to 326,000.

Q. And again, just for the record, how did the total amount of non-government funds in the accounts for this period compare to the total personal expenses we just went through?

A. So if we look at the non-government funds, that would be $4,337,000. You compare that to the $813,000 at the very bottom of this page and once again you've got approximately a five-to-one ratio. Five times as many dollars were received from non-government sources as were used to pay these personal expenses.

Q. The overall summary chart on the left is for the

May 1st, 2020, through the December 31, 2021, time frame. Did you perform an analysis related to any other time frame?
A. Yes. I performed it for a few other periods as well.
MR. CAVALLO: You can take down both and just put up Z-11.
BY MR. CAVALLO:
Q. Could you explain what was being shown as it relates to your analysis in this chart.
A. So this chart is identical to the analysis that we went through that was on the left side of the page throughout much of my testimony --
Q. The process was identical?
A. The process was identical. The only thing that's changed is the date range.
Q. And is this date range actually a subset of the previous date range?
A. Yes. Yes. So all of the expenses that are on this chart are also included on the first summary chart that we looked at. It's just smaller numbers because the date range is narrower.
Q. And what was the significance for your analysis of starting this date range on 11/23/2020?
A. So this would have been the date where -- for the loans that were specifically identified in the Indictment --
MS. MARTINEZ: Objection, Your Honor.
THE COURT: And the basis?

MS. MARTINEZ: I advised counsel that I had an objection for this witness to testify to what would be legal conclusions as to what is charged in the Indictment. The Indictment charges --

THE COURT: All right. Sustained on that ground.

BY MR. CAVALLO:

Q. Does this chart include just the loans that are specifically mentioned by name, specific name in the Indictment?

MS. MARTINEZ: Objection. It's incorrect.

THE COURT: All right. Hold on. With regard to reference to the Indictment, the objection is sustained.

BY MR. CAVALLO:

Q. Which government program loans does this analysis include, Mr. Bouchner?

A. There is a 2020 EIDL loan that is the $149,900. That was the 11/23/2020 date. And then there were the two PPP loans in March of 2021.

Q. And for just this time period, what -- can you explain to us what your analysis showed for the source of funds for the companies?

A. So the total sources for this time period was 3,258,000, of which 2,811,000 came from non-government sources and 447,000 came from government sources.

Q. How does the amount of non-government sources of funds

compare to the amount of government program loans?
A. Between five and six times as much.
Q. Going down to the next section, can you explain the business expenses for this time period.
A. Sure. Once again, the process was identical. I have the same four account categories, but for these business expenses the total for this time period was approximately $2.87 million.
Q. And how did the total business expenses for this time period compare to the total amount of government loans?
A. It was approximately six to one. If you divide two million eight seventy-six by 446,000, that's the ratio that you get.
Q. There was six times more business expenses than --
MS. MARTINEZ: Objection. Leading.
THE COURT: Sustained.
BY MR. CAVALLO:
Q. Next category down, the personal expenses, could you explain that.
A. Again, the same process. There were $563,000 that were categorized as personal expenses from the bank accounts and the American Express card.
Q. And how did the funds from non-government sources at the top compare to the total amount of personal expenses for this period?
A. It flipped going in the other direction. If you divide the 2,811,000 by the 563,000, again, it's approximately six times

as much, give or take.
Q. Did you perform an analysis for any other time period?
A. Yes.
MR. CAVALLO: Put up Z-12, please.
BY MR. CAVALLO:
Q. Could you explain how this chart relates to your analysis.
A. Yes. So again, the exact same analysis, looking at the same categories of items. The only difference is that this is from 3/29/2021 through 9/15/2021.
Q. Is this yet another subset of the overall summary we first looked at?
A. Yes. These are all expenses or expenditures contained in both the first summary chart and the one that we just spoke about.
Q. And what's the significance of this particular time frame?
A. So this would have been the date that the last PPP loan monies came in and extended out for 24 weeks.
Q. Why extend out 24 weeks?
A. There was testimony in the case that I listened to that talked about a 24-week period for the repayment of PPP loans where forgiveness is being sought.
Q. Did Mr. Sheppard apply for forgiveness for these loans?
A. Not for these.
Q. But you looked at this period anyway?
A. Yes. I was asked to by counsel for illustrative purposes.

Q. Could you start at the top and walk us through the source of funds for this period.
A. Sure. So the source of funds for this 24-week period was $1,288,000, and that was comprised of monies that came from non-government sources of 991,000. And from the two government loans, that would have been the 297,000.
Q. How did the total amount of non-government sources of funds compare to the total amount of government loans for this time period?
A. A little more than three to one.
Q. And the next section down, the business expenses, could you walk us through that, please.
A. Sure. Again, it's the same analysis. I won't go through it in the same level of detail. But when you add up the four categories that we have discussed on the prior two charts, we come to total business expenses of $1,136,000, approximately.
Q. And how did the total business expenses of this period compare to the amount of government program loans?
A. So it's a ratio of approximately four to one.
Q. And finally, the personal expenses, could you walk us through that?
A. Sure. Taking the same two categories, "Bank Account Personal Expenses" and "American Express Personal Expenses," we get a total of $240,000 in personal expenses over this 24-week period.

Q. And how did the funds from non-government loan sources compare to the amount of total personal expenses for this period?

A. It was, once again, about four to one, but now going in the other direction.

MR. CAVALLO: You can take it down.

BY MR. CAVALLO:

Q. Given your analysis of the sources and uses of funds during these various time periods, what is your opinion regarding the companies' business expenses?

A. Well, the companies' business expenses dwarfed the amount of monies that were received by the companies for government loans. Generally, what we saw was anywhere from four to six times as much.

Q. And given your analysis, what's your overall opinion regarding the companies' -- the personal expenses paid by the companies across these various time periods?

A. Sure. When you look at the total non-government sources, and you compare that to the amounts that were used by the company for payment of personal expenses, once again, it was a large disparity. Three to five times as much money came in from non-government sources as were expended for personal reasons.

Q. Were you asked to give any other opinion in this case?

A. I was asked to review the historical personal expenditures by the company in order to be able to see how that compared to what was done after the company began to receive some of the government funding.

Q. Okay. I'm going to come back to that.

MR. CAVALLO: I'd actually like first to go back to Z-1.

BY MR. CAVALLO:

Q. Mr. Bouchner, Z-1, what was the -- what's the source of the information in this particular chart?

A. This particular chart was bank statements.

Q. This is just a summary of your review of the bank statements?

A. Yes. For the sources.

Q. And --

MR. CAVALLO: Okay. Your Honor, I would like to move just this particular chart, given Mr. Bouchner's testimony, into evidence as Defendant Z-1 under Rule 1006 as a summary chart.

THE COURT: Any objection?

MS. MARTINEZ: No. No objection as to Z-1.

THE COURT: All right. Admitted into evidence.

(Defendant's Exhibit Z-1 received into evidence.)

BY MR. CAVALLO:

Q. Sorry. Go back to your opinion now.

A. Sure.

Q. What was the purpose of looking at the historical payment of personal expenses by the companies?
A. I observed that over time a lot of expenses that were treated as personal during the period after government loans came in were also paid in prior periods. So I wanted to look to see whether there was any difference in the behavior or the amounts that were being paid, you know, in a general way.
Q. And which personal expenses did you look at for this part of your analysis?
A. I looked at the mortgage payments. I looked at amounts that went to the Florida Prepaid College account. I looked at American Express. I also looked at certain other expenses that were identified as well, like for school.
Q. Why did you focus on those particular personal expenses?
A. These were expenses that were addressed in trial, and they were amounts that were recurring in nature and were covered over the entire period of time.
MR. CAVALLO: Please put up Z-13.
BY MR. CAVALLO:
Q. Mr. Bouchner, could you tell us what is reflected in Z-13 as it relates to your analysis.
A. Sure. So when you look at Z-13 here, this would be a history of all of the payments that were coming from the three companies that we've been talking about, in order to be able to pay the mortgage on Mr. Sheppard's residence beginning in 2014

all the way through 2021.

Q. And given your review of this period, what did you conclude about the historical payment of Mr. Sheppard's mortgage from the companies?

A. With the exception of a slight difference in 2015, when some payments were made from something other than these three companies, you can see that it was pretty consistent, 126,000 in '14, 126 in '16, '17, 128,000 in '18. Really, all the way up through 2020, it was the same. And in fact, in '21, there was a reduction in some of the monies that were used out of these three accounts. But historically what they were doing after the government loans were made was essentially identical to what was happening in all of the years that led up to that.

MR. CAVALLO: Please put up Z-14.

BY MR. CAVALLO:

Q. Mr. Bouchner, could you please explain what's shown in this chart.

A. I did a similar analysis. I didn't go back quite as far because I believe these payments began in 2017. But what you see here is these were amounts that were paid to the Florida Prepaid College program. It began in 2017, and you see that in 2017, '18, '19, in nearly every month there was a small payment made for these programs. And in fact, in 2020 and 2021, the amounts actually were less than what they were beforehand.

Q. Fair to say your conclusions based on this chart didn't change from the previous chart?

A. No. It's consistent payment. They were doing what I would say business as usual.

MR. CAVALLO: Please put up Z-15.

BY MR. CAVALLO:

Q. Can you explain what's shown in this chart.

A. Sure. So this is a summary of the American Express activity. It was taken from the American Express statements and the bank statements in order to be able to look to see how these charges were handled by the company in the years preceding and after the government loan program.

Q. Could you just walk us through this column by column, and just start with the third column, the furthest column to the right.

A. So when we look at the furthest column to the right, this would be --

MS. MARTINEZ: Excuse me, Counsel. I am just not sure I have this. Where --

MR. CAVALLO: This is Z-15. It's in the package.

MS. MARTINEZ: Did you file this?

MR. CAVALLO: Yes.

MS. MARTINEZ: What page was it in your filing?

MR. CAVALLO: I don't have it in front of me.

(Pause in proceedings.)

MS. MARTINEZ: I found it. It's at the end.

THE COURT: All right. Let's continue.

MS. MARTINEZ: Thank you for your patience.

MR. CAVALLO: Just for the record, it was filed at Docket Entry 172-2.

MS. MARTINEZ: Saturday evening.

BY MR. CAVALLO:

Q. Could you please walk us through -- Mr. Bouchner, would you please walk us through the furthest column to the right, what that shows.

A. Yes. The furthest column to the right would be the total activity in the American Express statements for each of the years 2016 through 2021.

Q. And let's now go to the first column -- well, technically the second. But the payments from HM Management, HM-UP, HM Four, the companies we're talking about, how did you prepare those entries?

A. So what I did there was I went to the bank statements to see when payments were used from HM Management, HM-UP, or HM Four that were used to pay the charges that were identified in the rightmost column.

Q. There were significant business expenses paid by AmEx in 2020 and 2021?

MS. MARTINEZ: Objection. Leading.

THE COURT: Sustained.

BY MR. CAVALLO:
Q. What was the level of business expenses paid by AmEx in the years 2020 and 2021?
A. They were considerable as we went through on a prior chart, where we identified payee or merchant by merchant and the totals that were over that period of time.
Q. And now the middle column, "Payments From Other Sheppard Entities," how did you calculate that?
A. That would have been basically the difference between the two columns.
Q. You subtracted column 1 from column 3?
A. Yes. If I took the 477,360 in 2016 and subtracted from that the 299,400, the difference would have been amounts that were paid from other entities that were not part of these three companies.
Q. And what did you conclude as part of your analysis, given the historical payment of AmEx?
A. Well, historically, payments were made by Mr. Sheppard's entities for the payment of the AmEx. The amount of the total charges was relatively consistent. And that, again, it was a situation where what I saw after the government loans were being made was generally consistent with what we saw beforehand, that there wasn't a change in behavior. It was business as usual in terms of how these expenses were treated.
Q. Did you review any other -- the historical payment of any

other personal expenses not shown in the charts?

A. Yeah. There were some payments made to Miami Country Day, and I saw evidence of individual payments made. There were only a couple afterwards and only a couple made before, but it didn't really lend itself to a full chart because it was just a couple of transactions, but that's what I saw.

Q. That was consistent with what you had seen from your analysis of other expenses?

A. That's correct.

Q. And given this entire analysis of historical payment of personal expenses from the companies, did you form any opinion?

A. Yes. I think, as I've been testifying to, what I saw was, was that there were personal expenses that were clearly paid in 2020 and 2021, but those personal payments were very similar to the types of payments and in many cases the amounts that were being paid prior to. This was not a situation where when the government loans started to come in we saw, like you do in things that you read about in the paper where Lamborghinis, and casinos, and world trips --

MS. MARTINEZ: Objection. Relevance.

THE COURT: Sustained.

BY MR. CAVALLO:

Q. Just to finish your opinion, this was a situation where the payment of personal expenses were consistent?

MS. MARTINEZ: Objection. Leading.

THE COURT: Sustained.

BY MR. CAVALLO:

Q. Could you just finish stating your opinion, Mr. Bouchner.

A. My opinion is, is that the way the money was spent after the government loans came in was entirely consistent with the way monies were spent by the company in terms of business and personal in the years that preceded those loans.

MR. CAVALLO: If I could just have one second, Your Honor.

THE COURT: All right.

(Pause in proceedings.)

MR. CAVALLO: I have nothing further at this time, Your Honor.

THE COURT: All right. Cross-examination.

(Pause in proceedings.)

CROSS-EXAMINATION

BY MS. MARTINEZ:

Q. Good afternoon, Mr. Bouchner.

A. Good afternoon.

Q. Your certifications include certified management accountant; is that correct?

A. That's correct.

Q. And that is different from certified public accountant, correct?

A. That is different.

Q. The origins of certified management accountant was cost accounting; isn't that correct?

A. That would be certainly an area that would be covered under the CMA.

Q. When it was founded, that is, the certification, it related to analyzing how much it would cost to produce a product by a company and those type of concerns by management. That's just the historical foundations for that certification, CMA, correct?

A. It's much broader than that in terms of what it now covers, but that may have been the origins.

Q. And one difference between a certified management accountant and a certified public accountant is that certified public accountants are the ones who do the audits for, for example, the financial statements of publicly traded companies; isn't that right?

A. That could be a role that a certified public accountant would play. Many don't. But that is one of the responsibilities for those that do.

Q. And that is not something that a certified management accountant does; isn't that right? Certifying that financial statements have been fairly stated and providing an attestation after having audited those financial statements, that is not something that a certified management accountant does?

A. Sure. The attest function of an audit would be performed

by a CPA, yes.
Q. Right.
A. And not a CMA.
Q. One of the differences between a CMA, like yourself, and a certified public accountant is the certified management accountant works more closely with management and sometimes in an advisory function; isn't that correct?
A. I wouldn't say so. I think that there are certified management accountants that are in many walks of life. Some work internally within the companies, some are consultants, some do what I do. There's different roles that different people play. I don't think you can make a universal, you know, characterization like that.
Q. In this particular case, you did rely on representations that were made to you by Mr. Eric Sheppard, correct?
A. In some respects. We certainly had conversations. You know, most of what I did would have been based on the documentation that I reviewed, with an opportunity for questions and clarification from Mr. Sheppard.
Q. In this particular case, you relied on him for a number of things that you said in your direct examination. For example, confirming whether something was personal or business; is that right?
A. Generally not. It was more being able to get some additional confirmation. As I had mentioned, the American

Express statements all were identified line by line as personal, or professional, or business. The way it was characterized in the QuickBooks records were also an indication of whether it fell in one category or the other. I didn't speak with Mr. Sheppard until after I had done all of that analysis, grouped all of the expenses by payee, you know, and grouped them in total dollar amount, and then I would go through it to ask questions where I felt I needed to.

So you know, I would say his role was in some ways confirmatory, but generally the documents spoke for themselves once I put all of that information together.

Q. And the information -- in addition to -- QuickBooks had some of the information from the bank records, correct? But it also had additional notations that you relied on, correct?

A. Sure. So you would see the dollar amounts for sure. In some cases you would see -- in addition to maybe the check number that would be on the bank statement, it might actually have the payee there, which would be consistent with the bank -- with the checks that were included.

Dates would sometimes be different because the posting date may not be exactly the same as the date that it cleared the bank, but you would see that it was the same transactions. But in addition to that, they were categorized into account categories, assets, liabilities, expenses, revenues. That wouldn't be on the bank statement. And there would be memo accounts that would provide additional detail that would be entered by Ms. Gonzalez.

Q. That was the point I was getting to. You relied on information that was input into the QuickBooks by Ms. Gonzalez, correct?

A. Yes. These were contemporaneous records that were prepared in real time, basically. I spoke with Ms. Gonzalez, who told me that she would regularly update the QuickBooks throughout the course of the year. The American Express notations that were identified were done on a monthly basis. So yes, I did rely on those contemporaneous records.

Q. Well, in fact, the summary of your testimony, the brief summary that I was provided, indicated that Ms. Gonzalez actually did not always categorize things the same way, so you actually did rely on conversations to make changes to what she had put in initially; isn't that correct?

A. Yes. There were rare instances where, when I would group items by payee, I may see the majority of them as personal and a small number as business or vice versa. I think I testified to this. And when I had those types of questions where there was difference, I wanted to understand whether there would be a reason for it, and in a couple of instances I would re-categorize. But we're talking out of the millions of dollars of transactions that I looked at, the recharacterization was probably in the thousands of dollars, certainly not even in the tens of thousand of dollars.

Q. You didn't keep a written record of anything that Mr. Sheppard told you or anything that Ms. Gonzalez told you; isn't that correct?

A. It would have been in spreadsheets where the record would have been the characterization of business or personal. So what would happen is these were extended periods of time. Once I had done my analysis, I put it all together, I lined up all of the individual payees, I sat with Mr. Sheppard, and we would go through it. And if I had a question about whether something was personal or business, I would ask him, and the categorization was the result of that.

Q. My question relates to: Did you obtain in writing -- any of the representations that were made to you by Mr. Sheppard or Ms. Gonzalez, did you either obtain it in writing from them or did you write it? The answer is no. Correct?

A. The answer is -- well, if you can include the information entered into the spreadsheet, that would be it. If you're looking for handwritten notes, no, I don't have handwritten notes.

Q. Well, what I'm looking for is a way that we would actually know what it was that you changed. We actually don't know because it's -- the only thing we have is your ultimate summary. But we don't know what specifically you changed in any one item and whether it was Mr. Sheppard or Ms. Gonzalez who told you; isn't that right?

MR. CAVALLO: Objection, Your Honor. Compound.

THE COURT: Do you understand the question, Mr. Bouchner?

THE WITNESS: I think I do.

THE COURT: All right. You may answer the question.

THE WITNESS: I don't think that's entirely right because there really is no category of personal or business in the QuickBooks or in the bank records. So I started off with a clean slate, and I took that information -- and all I had were the notations, and certainly all that information has been provided, which --

BY MS. MARTINEZ:

Q. How -- how would I know? Tell me one example of one change that I would know in writing that you made that is based on either Mr. Sheppard's or Ms. Gonzalez's representations to you. How do I know what those representations are? How do we know what you changed?

MR. CAVALLO: Objection, Your Honor. Form of the question.

THE COURT: Overruled. You can answer the question.

THE WITNESS: I don't have a listing because it was done, like I said, in real time. All I can tell you is that the re-characterizations of what were there were an extremely small number, you know, very, very few. So it certainly would not rise to the level of materiality that I think would be at all relevant to any of the opinions that I've given in this case. The information was generally there, and it can be gleaned from the records that I reviewed and summarized --

BY MS. MARTINEZ:

Q. So in reality you didn't need to talk to them?

A. Well, you know, I still feel like it's important to have conversations, to be able to ask questions about something that -- maybe where we had the American Express card statements, where I actually had an item for each and every one. That wasn't always the case for the bank statements. There would be amounts that were paid, and I may have asked Mr. Sheppard: "What was this for," and he would say: "Well, that was a contractor that did the lighting. That was a contractor that did the tile." And as he was explaining what it was, I would say: "Business. Business," because it's lighting or tile.

If it was something he would say: "Well, that was personal," I would say: "Okay. If it's personal, then I don't have to worry about that," and I'll put that as a personal expense. But I would want to understand what it was, and that's how I went about doing my analysis.

Q. Part of what I'm getting at is accounting practices. And you do agree with me that there are different accounting practices that include obtaining from management written statements as to what it is that the accountant is relying on, as opposed to just a discussion where there's nothing in writing. You do recognize that, that the AICPA, which you teach at -- the Institute of Certified -- American Institute of Certified Public accountants, which you teach at -- you recognize that their standards include differences?

MR. CAVALLO: Object to the form of the question, Your Honor.

THE COURT: Sustained. Rephrase.

BY MS. MARTINEZ:

Q. Obviously, you know what the AICPA is, correct?

A. Yes.

Q. And you recognize that there's different ways that an accountant in practice relies on representations for management. One could be discussions. Another one, which provides more of an assurance, is when you obtain the management representations in writing. I mean, you're familiar with that, correct?

A. I'm generally familiar with that, in that if one was doing a financial statement audit, there may be -- well, there is often a management representation letter that would be provided that would make certain representations. I don't necessarily think that that adds greater assurance. What it does is it memorializes certain representations that are being made to the auditors for purposes of being able to and express an audit opinion.

But that's, I think, a different analysis. That's a different scope of work than what I've done in this case. This is not a financial statement audit. It is differentiating in most cases what were obvious business versus personal expenses and having some limited discussion where there may have been some small questions.

Q. Right. And one of the things that would be different about an audit would be that you would actually not just rely on a memo line on a check. You would go further to verify what was behind that check; isn't that right?

A. There is testing that is involved in an audit. And so, yes, I mean that could be a part of a different type of engagement, but that's not what I've done here.

Q. Right. In this case you did not do an audit, correct?

A. I did not do a financial statement audit in the context that we were just discussing.

Q. Well, in layman's terms, you did not go back and verify, for example, the example I gave, if a memo line in a payroll -- was in a check and it said: "Payroll," you did not go further to verify that. You did no testing to make sure that that was true, correct?

A. Well, I would have -- besides the memo line, I would see the account that it was charged to. I would also have the project records that were maintained by Mr. Vasilas that would have similar names and individuals in there.

So there was more than what you're suggesting. But I did look at every single -- you know, I have a record of every transaction in the bank account. I have supplemented that with the QuickBooks records. I supplemented it with the business records. So I think collectively in some respects this was far more detailed in many respects than an audit would be where there may be some testing in order to be able to express an opinion on the fairness of the overall financial statement results. Even an audit has materiality issues, where if it's below a materiality threshold it's not something that an auditor would be concerned about.

Q. So for example, another one of your certifications is that you are a certified fraud examiner; isn't that correct?

A. Yes.

Q. And as part of your knowledge as a certified fraud examiner, you know that you have to look beyond the paperwork to determine whether something is true; isn't that right?

A. Well, I think it really depends. That's a pretty broad question, so it depends on what one's doing. But I feel that the level of analysis and the documentation that I looked at was more than sufficient to reach the conclusions that I provided in court today.

Q. Right. You did not analyze it for fraud. That's correct?

A. I did not analyze it for fraud. That was not a specific objective of what I was doing. I was trying to understand what funds came in, what funds went out, and how they were used, as reflected in many cases by the companies' contemporaneous business records that preceded this litigation.

Q. You have been in this courtroom pretty much every day; isn't that correct?

A. That's correct. Yes.

Q. And you do know that this is a fraud case, correct?

A. I do know that there are accusations that involve fraud, yes.

Q. And as you sat in the courtroom looking at the screens in the back, you saw what everybody in the courtroom -- it's undisputed that there were false documents that were submitted. You saw that?

MR. CAVALLO: Object to the form of the question, Your Honor.

THE COURT: Whether he saw it. Overruled.

THE WITNESS: I saw documents that were presented in court that were identified as fraudulent.

BY MS. MARTINEZ:

Q. And forged, correct?

A. There were allegations of forged documents as part of the case, yes.

Q. Actually, you did hear it's undisputed, correct?

MR. CAVALLO: Objection, Your Honor. Beyond the scope of direct.

THE WITNESS: I mean --

THE COURT: Overruled on that ground.

THE WITNESS: I saw the accusations. I saw the documents. I'm not disputing that. I'm just not giving any opinions as to whether they were there.

BY MS. MARTINEZ:

Q. You were not asked to look at it in terms of the false documents that were submitted in this case. You were not asked to review that?

A. Not with respect to what was purported to be fraudulent documents. I'm not providing any testimony in that area.

(Pause in proceedings.

MS. MARTINEZ: Is ELMO -- are we on ELMO?

BY MS. MARTINEZ:

Q. That's a little numbering that I put in there for Z-2, which is your summary.

A. I see it.

Q. Now, this is your summary. It's a time period from May 1st, 2020 to December 31st, 2021, covering three companies, HM Management Development, LLC, HM-UP Development Alafaya Trails, LLC, and HM Four.

In that document, what's the total that you have -- your own analysis, the work that you did, what's the number that you have for personal expenses, the total number that you have for personal expenses?

A. $813,000 and change.

Q. And taking a look at the top, what's the number that you have for government programs total?

A. $893,000.

Q. So during this time period, according to your analysis, of these company accounts, the Defendant paid over $800,000 in personal expenses, correct?

A. Yes.

Q. And I'm not disputing your point about money being fungible. I'm just asking this question. It is true from your own chart that during this time period the money that the Defendant had to use through these companies was supplemented by $893,145 in COVID pandemic loans, correct?

A. The $893,000 was part of the 5,230,000 that came in over that time period, yes.

Q. Okay. Let me just -- if you would, just answer my question. The Defendant, during the time period in your own analysis, had personal expenses of approximately $813,000 paid out of the company accounts of these three companies in your own summaries, correct?

MR. CAVALLO: Object. Asked and answered.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. During that time period, I asked -- and you gave an explanation, but you didn't answer just a simple question. During that same period, were the same company accounts supplemented by pandemic loans in the amount of $893,145?

MR. CAVALLO: Objection. Asked and answered.

MS. MARTINEZ: He did not.

THE COURT: I'll allow that. Overruled.

THE WITNESS: I thought I answered yes at the end of my explanation, but I'll reverse the order.

BY MS. MARTINEZ:

Q. Thank you.

A. Yes, the $893,000 that you asked me about was included as part of the $5.23 million in total that was received.

Q. So would you agree with me that someone has more for their business and more for their personal life when they obtain $893,145?

MR. CAVALLO: Object to the form of the question.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. As a certified management accountant, does additional monies, such as this several hundred thousand, supplement the amount that someone has to use to pay personal, business, everything?

MR. CAVALLO: Object to the form of the question.

THE COURT: Do you understand the question, Mr. Bouchner?

THE WITNESS: Yes.

THE COURT: All right. You may answer the question.

THE WITNESS: I don't dispute that there was $5.23 million that was supplemented by -- which includes additional funds that came in above and beyond the non-government sources. I don't think we're disagreeing there was $893,000 of additional monies that came in over this time period that were available to the company.

BY MS. MARTINEZ:

Q. And actually that the amount that came in pretty closely matched the personal expenses that were paid; isn't that right?

A. I think that that's coincidental because I've already established the types of expenses that were incurred were consistent with what was done in the years that led up to the 2020 and '21 time period. But the numbers are all laid out exactly on this chart as to what came in and what went out.

Q. Since you have talked about the amount of non-government funds, I -- I'm not sure that I got it really from your direct exactly what the 4.3 was that you have in that -- obviously, some of that includes rent; isn't that correct?

A. Yes. Some of that includes rent.

Q. You don't have the numbers?

A. Not off the top of my head. I know that there was $600,000 that came in from the One Florida contributions. There was additional monies -- I think the total monies that were put in

by the owners in 2020 and 2021 was approximately $800,000, maybe a little bit more than that.
Q. May I ask: That $800,000 by the owners, what do you mean?
A. So there was 600,000 that came from the personal lines of credit.
Q. So you're including that?
A. I'm including that. And then there were additional monies in 2020 and 2021 that came from Mr. Kallman or his entities and Mr. and Mrs. Sheppard as tenants by the entireties.
Q. In the latter part of 2021?
A. In 2020 and 2021, there was over $800,000, but I'm doing this from memory now.
Q. Total?
A. Yes.
Q. Now -- and again -- so that's the best you can do in terms of memory. Number one -- no -- 800,000 that you say 600 you're allocating to the One Florida loan. Then the other 200 is coming from where? I'm just trying to identify what is not rent.
A. I believe approximately 800 and some odd thousand dollars was received in 2020 and 2021. I don't have specific cutoffs, but the majority of it was rent above that. There weren't too many other items besides the monies that came in from -- as contributions, plus rent. That made up almost everything. There may have been a couple of small items that were

immaterial.
Q. So the 800 that you're mentioning includes the 600, correct?
A. Yes.
Q. So then that means that -- I would need to go to the -- to go to get my phone to do a calculation exactly, but maybe you can do it off the top of your head. If you reduce 800 from the 4.3, what do we have left?
A. If I just did that math --
Q. Thirty-five -- 3.5 million maybe?
A. Something like that, yes.
Q. So according to your chart, during this time period, Mr. Sheppard received in his bank accounts 3.5 million in rent?
A. Again, I don't know if that's the exact number, but I'm doing the best I can trying to answer your questions. Somewhere in that direction, give or take a little bit.
Q. I mean, you understand just -- when I asked you about your chart, you kept pointing to the non-government funds, so I'm trying to figure out what those are. Because, again, I didn't hear it in your direct. So that's all I'm doing.
We have during this time period 3.5 million in rent and approximately 800,000 more that you're calculating that includes about 600,000 in the One Florida loan. Do you have any recollection what the other 200,000 is?
A. There were periodic contributions that went into equity of

the company that came from -- most of it I believe was Mr. and Mrs. Sheppard tenants by the entirety, was how it was characterized, those deposits.

Q. And is that in the accounts that were in SunTrust or is that in the Amerasia accounts that were opened in the summer of 2021?

A. I don't recall. I'd have to go back and look. I just don't know.

Q. You did notice that your summaries extend to the end of 2021, whereas the United States's summaries stopped in October of 2021, correct? You noticed that?

A. Yeah. There was a five- or six-week difference.

Q. Right. And as you heard the witness testify, it was because the bank accounts that received the PPP and EIDL loans closed out in October of 2021.

A. Right. They closed out and they opened new accounts. But they could have stayed open. There was nothing magic about those dates. It was just that they made a decision to change bank accounts, but I'm not sure that there's a practical importance to that other than that's when those bank accounts changed over.

Q. So as a certified management accountant, you know the value of money today is not the same as the value of money tomorrow, correct?

A. I'm familiar with that concept.

Q. Right. So you know, for example, how favorable it was to get a government loan at a one percent interest rate; isn't that right?

MR. CAVALLO: Object. Beyond the scope of direct.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Well, isn't it actually that a company is making money -- isn't it a fact that a company is making money if they obtain a loan at one percent and the inflation rate is higher?

MR. CAVALLO: Object. Beyond the scope of direct.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Now, in your summary did you look at the individual accounts at all or did you always look at everything together? Meaning, did you look at, for example, HM Management on its own, HM-UP Development Alafaya and HM Four separately?

A. Well, to create the databases, I had to pull in information from each individual account, but my analysis was based on the aggregate grouping of these three companies together.

Q. So you're familiar, for example, that HM Four did not have a bank account until October 22nd, 2020?

A. Yes. I'm familiar with that.

(Pause in proceedings.)

MS. MARTINEZ: Should I go to -- it's -- may I go to ELMO. It's 41-4.

Could you highlight the top half.

BY MS. MARTINEZ:

Q. You're familiar with the Exhibit 41-4, correct?

A. I recall reviewing it, yes.

Q. And it shows that this account basically received one loan, one Economic Injury/EIDL loan in November of 2020, correct?

A. Yes.

Q. Now, it also shows that it received money from HM-UP Development Alafaya Trails. You see that?

A. I do.

Q. And it actually received that money before the Economic Injury/EIDL loan came in, correct?

A. I recall that there were monies that came in after the original $80 deposit. The deposit dates are identified here as 11/16/2020 through 3/31/2021. So I don't believe all 66,000 came in beforehand, but certainly a portion of it did.

MS. MARTINEZ: Can you take this down and put up 39-13.

BY MS. MARTINEZ:

Q. Have you reviewed this document? This is from Government's Exhibit 39. It's part of the bank records from SunTrust from the account that we were just looking at.

A. I reviewed -- yeah. I reviewed the bank records as part of my analysis. I don't have the specific recollection of this deposit, but I do recall on the statement that the deposit was made.

Q. So is this what you were just talking about that -- before -- first -- the first thing that happens in this account is that $80 is deposited. And then after that this is the next deposit; isn't that correct?

A. That's correct.

Q. And according to the bank records, it says that Eric Sheppard, manager of HM-UP Development Alafaya Trails, requests a withdrawal of 60,000 from the account ending in 5973 and deposits 60,000 into HM Four, where Eric is also a sole member. And that's the deposit that we saw going in, correct?

A. Yes. That's consistent with Mr. Sheppard's testimony.

Q. Right. And before this money had gone in, nothing else in the account except $80, correct?

A. That's my recollection. Yes.

MS. MARTINEZ: Can you put up Exhibit 39-14.

Sorry. In fact, if you don't mind, can you leave the other one up on the left, 39-13 on one side, 39-14 on the other.

39-14 is also from Exhibit 39. And I'm going to identify it with a Bates label. It's 007966. And just for the record, the previous one, 3913, is Bates label 9168.

BY MS. MARTINEZ:

Q. Do you see what happened immediately the following day on November 17th, 2020?

A. Yes.

Q. And what did Mr. Sheppard do immediately the next day?

A. He withdrew $50,000 from this account and transferred it to a different account.

Q. Well, he actually transferred it right back to the account he had removed it from. You see -- it's upside down there, but you can see the 5973 in there.

A. Yes. I see that.

Q. Right. So that's the extent of the activity that there was in the account before the Economic Injury Loan came in on November 23rd, 2020; isn't that right?

A. I would have to review the statement, but I'll take your word on it if there was no other transactions. I don't recall in that week period.

Q. And as part of your review, did you look at this type of transaction, where $60,000 goes in on one day and the very next day the same -- a very close amount is moved right back to the previous account? Did you look at that?

A. I saw it.

Q. And you didn't question it?

A. Well, I don't -- I understood that there were discussions about the need to create a bank account for purposes of establishing that there was a company and that had a bank account, and that it was known by those that Mr. Sheppard was working with to get the loan that this account needed to be created.

But I don't have any insight into how the -- maybe $10,000 was needed and he didn't need to put 60,000. I would be purely speculating by 60,000 was put in, and 50,000 came out, and 10,000 was left. I don't have an understanding of the reasons for it.

Q. Well, actually, you were here in the courtroom and you saw that on November 17th, the day after depositing the 60,000, Mr. Sheppard obtained a bank transcript showing that 60,000 was in the account and he sent it to the SBA.

MR. CAVALLO: Objection, Your Honor. Counsel is testifying.

BY MS. MARTINEZ:

Q. Did you see that?

THE COURT: Overruled. I'll allow it.

BY MS. MARTINEZ:

Q. You were here in the courtroom.

A. Yeah. I saw that, but it still doesn't explain what the significance was of the $60,000. I haven't heard anything that said that in order to be able to obtain a loan there needed to be 60,000 there. Maybe the number was -- again, I don't want to speculate. I can tell you what I'm looking at in front of me, and I don't disagree this is what happened. I just don't have any knowledge why it happened.

Q. And you didn't inquire right after -- right after

Mr. Sheppard obtains the bank statement showing that there's 60,000, he removes 50,000 and puts it right back where it was. You did not inquire about that type of transaction in this bank account that had just been created?

MR. CAVALLO: Objection. Asked and answered.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Isn't it a fact, with your experience as a certified fraud examiner, that this is exactly the type of transaction that would cause you to question something?

A. I haven't heard any testimony that the 60,000 was important in order to be able to obtain a loan and that something less than that wouldn't have sufficed. Again, I -- you're -- I don't know if it's important. I haven't seen anything that would suggest that that dollar amount or those funds needed to be there. So anything that I would be answering would be speculating at this point.

Q. But you do see that immediately after getting the bank statement he pulled $50,000 out and put it right back where it was at the Alafaya account?

MR. CAVALLO: Objection. Asked and answered.

THE COURT: Sustained.

MS. MARTINEZ: Can you go back to 41-4.

Just -- yeah. Highlight the -- just highlight the entire thing for a second.

BY MS. MARTINEZ:
Q. Now, you did not review HM Four by itself, correct?
A. Not by itself.
Q. Obviously, you're familiar with this exhibit that does that, 41-4. Isn't it correct that this is it? This is the extent of the activity in that account. It receives money from Alafaya Trails, and then it's moved out. You see that, correct?
A. I do.
Q. And then it receives an Economic Injury Disaster Loan $149,900 on November 23, 2020. You see that, correct?
A. I do.
Q. And then after that the money is used in the various ways shown that you yourself have analyzed -- but you have analyzed in a combined way. But that's -- within a short time, all the money is used up, the money that came in, the Economic Injury Disaster Loan money, correct?
A. I can agree that $217,480 came in and $217,480 went out over the life of this bank account.
Q. And this bank account did not have any payments to employees, correct?
A. I don't recall. I mean, I can look at it and I'm not seeing it specifically identified on here, other than it says: "Payments to individuals." And I don't believe Mitchell Lieberman was an employee. I believe Jeanette Mendoza --

Q. Sorry. I did not mean to do that. I was ready to finish but you weren't.

MS. MARTINEZ: Can you bring it back up. It's 41 -- it's 41-4.

BY MS. MARTINEZ:

Q. I apologize. I interrupted you.

A. It's fine. There are some payments to individuals. But sitting here right now, I don't recall whether any of these would be to a worker or not.

Q. And this particular account did not receive any rental money, correct?

A. No.

Q. In fact, the only money that came into this account other than the Economic Injury Disaster Loan is the $80, and then internal transfers -- I call it internal transfers but, you know, transfers from other accounts in which Mr. Sheppard is a signer; isn't that right?

A. Yes.

Q. And that's it for the source of funds, correct?

A. That's correct.

Q. Okay. We both agree.

MS. MARTINEZ: Let's take that down.

BY MS. MARTINEZ:

Q. Right?

MS. MARTINEZ: Okay. Please, can I go back to ELMO.

BY MS. MARTINEZ:
Q. I'm showing you your Exhibit Z-3.
A. Yes.
Q. And you see that you have an entry for payroll, meaning -- and you have in parenthesis "individuals"?
A. Yes.
Q. So I want to ask you about that. As an accountant, you know the difference between a W-2 employee and a 1099, correct?
A. Yes.
Q. And a W-2 employee is a type of employee that you withhold income taxes from and also Medicare and Social Security taxes, and then the employer pays those over to the United States, correct?
A. Correct.
Q. And a 1099 or independent contractor is someone who doesn't necessarily have the relationship I just described -- does not have the relationship I just described with the person who's paying them. They could be a 1099 for one company and also be a 1099 for another company, correct?
A. You could be a W-2 employee for one company and a W-2 for another company. I'm not sure that's a distinction. But withholdings are in most cases not done for 1099ed employees.
Q. And in this case -- and you have been here. So including -- you saw even Defense counsel when he was questioning the witnesses that were from banks that provided

PPP loans, Paycheck Protection Program loans -- you saw that for the Paycheck Protection Program it had to be a W-2 employee. Just the fact that that's what the regulations were, as counsel -- Defense counsel questioned witnesses, and that's what it is agreed to be --

MR. CAVALLO: Object to the form of the question. Outside the scope of direct.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. In this case that relates to Paycheck Protection Program loans and the Economic Injury Disaster Loan program, you were not asked to look at whether the people getting paid actually fit for the Paycheck Protection Program? You were not asked to look at that?

MR. CAVALLO: Object to the form of the question.

THE COURT: If he was asked. Overruled.

THE WITNESS: That would have been outside the scope of my testimony, and I don't believe it would have been relevant to what I had to do.

BY MS. MARTINEZ:

Q. Right. Right. You were not engaged -- in this fraud case that relates to the Paycheck Protection Program, you were not engaged, and you're not offering testimony to the jury, about whether these individuals actually were the type that anybody could have gotten a Paycheck Protection Program loan for?

You're not offering testimony as to that.

MR. CAVALLO: Object to the form of the question and asked and answered.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. With respect to the people that you listed -- you just -- the only thing that you relied on -- to put something in the name of payroll, the only thing you relied on is a memo line that said: "Payroll" or something in QuickBooks that said: "Payroll"? That's it? I mean, just to use the word "payroll," that's what you relied on?

A. That, the contemporaneous records that were made on the project site as well identifying them. The checks would say: "Payroll" on them. You know, I'm including them in the way that the company perceived them to be, what Mr. Sheppard perceived them to be. So that was my use of the word "payroll," not necessarily as they relate to a statute that he may have not been aware of.

Q. Well, that was a big statement. Did you look at all -- beyond the word "payroll" on either the QuickBooks or a check memo line, did you look to see whether any of these people were W-2 employees or 1099s? Did you yourself look into that?

MR. CAVALLO: Object. Asked and answered. Beyond the scope.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Did you review bank records in this case?

A. Yes.

Q. In the bank records in this case, including in your summary, you looked at Bank of America, didn't you?

A. Bank of America was one of the banks, yes.

Q. And you looked at the Bank of America account 5189, didn't you?

A. I don't recall.

Q. Sorry for my notations, but here you go. You see this is your summary, correct?

A. Yes.

Q. With little notation by me?

A. Yes.

Q. So 5189, you reviewed that account, correct?

A. I did.

Q. Do you recall that that account was an HM Management Development account that was labeled "Payroll"?

A. Yes.

Q. And do you recall that that account only paid out of that account Jeanette Gonzalez, Vanessa Gonzalez, and Elva Baluarte?

A. Generally, yes.

Q. Just those three people?

A. I don't recall if I looked at every statement and did that type of analysis in the way you're asking, but it would have included all that information in my database. And I'd have to review it to see if what you said is entirely correct, but generally that's my understanding.

Q. You do recall that there was a Bank of America account that was actually titled "Payroll." You do recall that?

A. I do.

Q. And you do recall, as these -- just these three individuals that we just talked about that were the only ones paid out of that account. You do recall that?

A. Again, I would have to go back and confirm that, but I'm generally aware those were individuals who were getting paid out of that account.

Q. And you recall that there was no other account -- other than that Bank of America account that was titled "Payroll," there was no other account that was titled payroll --

A. That was --

Q. -- that you looked at?

A. That was the only account titled "Payroll."

Q. And that it was actually only used through the end of 2019; isn't that right? This particular account? It closed out.

A. Again, I would have to go back and look to confirm that. I'm not disputing it, but I don't have a recollection of when it was closed.

Q. And then those individuals, in fact, were no longer being paid out of that account. They began to be paid out of the other accounts, like HM Management 5973. You remember that, that then those same individuals began getting paid out of other accounts?

MR. CAVALLO: Objection, Your Honor. The witness already said he doesn't remember.

THE COURT: Sustained.

(Pause in proceedings.)

THE COURT: Okay. Ms. Martinez, the jury is in need of a break. Let's go ahead and take a 10-minute recess.

COURT SECURITY OFFICER: All rise.

(Jury not present, 4:08 p.m.)

THE COURT: Ms. Martinez, how much more cross-examination do you think you have?

MS. MARTINEZ: I'm going to go for 15 minutes, Your Honor.

THE COURT: Fifteen more minutes. All right, then. We're on a 10-minute recess.

MR. ETRA: Your Honor, brief question. When the Defense rests, will the jury still be here? How are we handling Rule 29 -- what's the Court -- how does the Court handle that?

THE COURT: Well, in order to preserve the motion, why don't you go ahead and just move for it and I'll reserve, so that we can move right to --

MR. ETRA: In front of the jury?

THE COURT: Yes. Well, you want to -- I mean, with the understanding -- with the Government's understanding that after Mr. Bouchner concludes his testimony the Defendant will rest. So if you want to make the motion now, I'm going to go ahead and reserve, and it will be preserved for purposes of making it at the close of the Defendant's case.

MR. ETRA: So we do it formally after the close of Defense case?

THE COURT: Well, you don't need to proceed with argument. I'll reserve.

MR. ETRA: Right. Got it.

THE COURT: But what I'm saying is that rather than spending time in front of the jury, you can make the motion, I'll reserve, and we'll move right to rebuttal. Okay?

MR. ETRA: Okay. Got it. Thank you.

THE COURT: See you back here in 10 minutes.

(Recess from 4:10 p.m. to 4:23 p.m.)

THE COURT: All right. Welcome back. Are we ready to continue?

MS. MARTINEZ: Yes, Your Honor.

THE COURT: Do we need to wait for Ms. Jimenez?

MS. MARTINEZ: We can proceed, Your Honor.

THE COURT: Are you certain?

MS. MARTINEZ: I love my colleague.

THE COURT: You want to see if she's on her way in and if they're all ready?

Okay. All right. Let's bring them in.

(Before the Jury, 4:24 p.m.)

THE COURT: Welcome back, Ladies and Gentlemen.

Please be seated, everyone.

And we'll continue with the cross-examination.

BY MS. MARTINEZ:

Q. Mr. -- I want to make sure I pronounce it right. Say your name.

A. Bouchner.

Q. Bouchner?

A. Yes.

Q. Mr. Bouchner, I'm showing you your summary Z-1, where you have 4.3 in non-government sources, and it extends for a time period from May 1st, 2020 to December 31st, 2021.

Isn't it a fact that if you went closer to March of 2021 as your end date, that that amount of non-government sources would be substantially smaller?

A. It would be smaller. I don't have the specific dollar amount, but it would be smaller.

Q. Well, for example, I was going to -- you did different time periods. But for example, what the United States did closing out at October of 2021, the amount was smaller, correct?

A. Yes. By the six or seven weeks that wasn't included, yes.

Q. And for some of your other summaries, where you used

different time periods, you did use smaller amounts. Like, for example, in the last summary that you did, you had stopped in September of 2021, correct?
A. I looked at a 24-week period on that chart. Yes.
Q. Right. And then that reduced the amount of non-government funds, right?
A. It reduced the outflows and inflows, both.
Q. Right. But my point is that the last government loan came in at the end of March 2021, correct?
A. Correct.
Q. You recall that. So then the closer we go to that date, then the smaller -- if we go beyond that date, we're adding additional non-government funds because the pandemic is over and there's no more loans coming in.
A. That's correct. But we're also adding additional expenditures. So I was always consistent in that the period, that I looked at the totality of all the transactions.
Q. I'm going to ask you just a few questions to clarify your charts. I'm using this one to -- Z-2, I believe, because I want to ask you a question about the tenant improvements per second amendment Burlington lease, just to make sure I understand. Are you saying that 272,000 left these bank accounts or are you putting this money in there but it's not money that is leaving the bank account?
A. No. I think what I testified to is that this was not

something that was reflected and specifically identifiable on the bank statement because it was netted out of the rent. It was an expense of the company because they had to pay the $1.1 million-and-change penalty. But it came out of the rent proceeds, so the rent dropped by $272,000 over this 14-month period.

Q. Walk with me on this for one second. Part of the money coming in you relied on the bank records, correct? For the money coming in, the rent coming in, you relied on bank records, rent coming in, correct?

A. Correct.

Q. Okay. So was there less rent that came in?

A. Yes.

Q. Okay. And wouldn't that be reflected in the money coming in? So how would that be -- how could that be reflected as an expense of money coming out? In other words, if less rent came in, wouldn't that already be here? Wouldn't already the number here be less? So that you don't -- if it's reduced, it's already reduced. So then why would you subtract again the 200,000? I don't understand.

MR. CAVALLO: Object to the form of the question.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Could you help me understand? Do you understand my question? Did you understand my question or not?

A. I don't know how to clear your confusion because I think you're trying to link things that I didn't link here. It's not as if I took the four million seven forty-nine and subtracted it from the five million two thirty. This is just three different calculations. I believe the $272,000 is a real expense of the business because they lost rental income in the form of a penalty, and that's what that is.
Q. Maybe I just clarify, just to confirm, the $272,000 is not money that left the account?
A. It's not a bank transaction. It's an expense of the business caused by the penalty.
Q. So -- okay. So I have another question about business expenses. You organized your business expenses by looking at the American Express business expenses, and then you separately looked at bank account business expenses, correct?
A. Correct.
Q. So it's just a question of what you did to see whether these were business expenses of these businesses that you looked at, HM-UP Development, HM Management, HM Four. Those are the three you looked at, correct?
A. Correct.
Q. Right. So my question is: Did you do any -- I'm going to show you some business expenses, and I'm going to ask you: Did you do anything to see whether or not these expenses were really relating to another company, like, for example, CJUF.

Okay? So let me show you some. So for example, from the bank accounts you have legal fees, a hundred thousand dollars, and also in American Express you have legal fees 77,000, 38,000. Without giving me any details, I'm just wondering did you do anything to see if those were expenses related to these three companies that you analyzed or possibly another business litigation that Mr. Sheppard had?

MR. CAVALLO: Object to the form of the question.

THE COURT: Sustained.

BY MS. MARTINEZ:

Q. Did you do anything to make sure that these were legal expenses related to these three businesses?

A. Well, to the extent that HM Management is the management company for Mr. Sheppard and his entities, it would be an expense that was incurred by HM Management. So that's one of these entities. It wasn't an expense that was charged to CJUF, for example, hypothetically.

I mean, I know that by May of 2020 Mr. Sheppard was no longer in control of CJUF. I believe at that point he testified that it had gone to the control of Mr. Wildstein. But this was an expense that was incurred by HM Management, which paid the legal expenses for many of Mr. Sheppard's entities, so that would make it a HM Management expense.

Q. So I think your answer is that it's possible that it was another company that was not at least Alafaya Trails and HM

Four. Is that what you're saying, that it could be another company that was not specifically HM Management, HM Four, or --

MR. CAVALLO: Object to the form of the question and it misstates testimony.

THE COURT: Sustained. Rephrase, please.

BY MS. MARTINEZ:

Q. Is your answer that you don't know for sure whether or not it related to these three companies that you analyzed?

A. I have not reviewed the legal invoices to determine what the matter was, but that HM Management had historically always paid the legal bills for Mr. Sheppard -- at least many of the legal bills for Mr. Sheppard and his entities. So therefore it was appropriately an expense that would be that of HM Management, which was one of the three companies.

Q. Again, on Z-2 you have: "Business Expenses Paid by Project Manager," and I'm just trying to understand. Those expenses there, are they coming out of the bank accounts or are these coming out of another bank account that's not in Mr. Sheppard's name?

A. So I testified that I reduced the 280,000 by about 89,000. The 89,000 was the portion that came out of these bank accounts, which I eliminated. So there was no double counting. This 191,000 were amounts that were paid by Mr. Vasilas either direct or through his Diamonds Forever Miami company, and we've got checks that identify those payments. So those were not --

they were paid, like I said, by Mr. Vasilas or his entities in connection with amounts that he owed, and they handled it in this way in terms of their dealing with one another.
Q. Let me just repeat my question. Did 191,000 leave the HM Four, HM Management, or HM-UP Alafaya -- I'm just trying to understand what you're saying. Are you saying that that amount of money came out of the bank account or are you saying that it's an expense in a different way as you just explained?
A. It's an expense in a different way. It's not in the bank account top line. It was additional expenses that were incurred and handled in a different fashion.
Q. With respect to American Express Z-5 --
A. Yes.
Q. -- you start on May 1st, 2020. Now, does that mean that you started looking at charges on May 1st, 2020 or did you start looking at charges that were incurred in March but then had to be paid in May? Do you see what I'm saying?
A. This is a database of individual charges.
Q. So if you have May 1st, then it's charges that are beginning on May 1st?
A. Everything starts on May 1st, yes.
Q. Right. So then if there were payments -- if there were charges that were made in March but paid in May, they would not be reflected in your summary there in the charges part?
A. Right. Which is why I did this allocation. It's difficult

to take random payments because it wasn't as if the payments paid off the card every month. Ten thousand would come in, and then two weeks later 20,000 would come in. So there was always these random payments. There was no way of assigning a specific charge to a payment. So I took the 831,000, looked at the 765 in total, and then I did the allocation that's on the bottom. It was the best that I can do, but it kind of goes both ways. You have the beginning, it's a little bit different than the end, but it's a pretty good approximation.

Q. The allocation is an allocation that you also applied to the credit card of Jennifer Sheppard and Jordan Sheppard, right? In other words, the total amount for them was just a little bit higher and it got reduced when you did the allocation; isn't that right?

A. Well, it's the same account, so you have the same issue. But yes, everything got reduced by that roughly eight or nine percent.

Q. Right. I'm just saying I think you originally had intended to cover all of what Mrs. Sheppard and Jordan Sheppard had in their cards as personal, but then when you did your calculation you wound up reducing it a little bit with the allocation; is that right?

A. Well, I was interested in what the cash does. It doesn't matter -- if there was a charge that was never paid for, then I wouldn't include it. So what I was trying to do is I wanted to account for the totality of the actual payments, and I had to make that adjustment that you see on that page in order to adjust from the purchases to the paid -- to the payments.

Those charges may have gotten paid. They just may not have been paid by these three entities. There were other accounts that may have covered those costs. So I only covered the portion that would have been relevant to the three companies that are at issue here.

Q. During your direct examination -- and I do believe it's reflected in your chart somewhere -- you described that there was a loan that -- that Eric Sheppard had made to Mr. Jeff Vasilas, correct?

A. Correct.

Q. In addition to that, were you made aware that Mr. Eric Sheppard owes -- was left owing Mr. Vasilas $80,000?

A. I don't recall if I heard that testimony, but --

Q. No. Were you informed of that? No?

A. I don't recall.

Q. And were you informed that Mr. Eric Sheppard also still owed $50,000 to Lindsey Vasilas?

A. Again, I don't know anything one way or the other. There may be allegations, but I'm not aware of any.

Q. So in reviewing your resume, it was clear a lot of your practice includes what you're doing here today, reviewing evidence related to litigation and testifying in a courtroom;

isn't that correct?
A. That's definitely a portion of my work, yes.
Q. Right. And just, in fact, in this case alone -- we've all been here for quite awhile, and I think this might be day 15. So you've been here pretty much full days all that time, correct?
A. I've been here whenever the trial was in session.
Q. And in addition to that, you have spent time, you know, working on the case and reviewing materials, along with your staff who assisted you, correct?
A. Correct.
Q. So what is your current rate -- is your testifying rate -- your billing rate -- is your testifying billing rate the same as your review work rate?
A. Yes.
Q. And what is that?
A. Five hundred and 60 dollars an hour.
Q. So about how many hours have you spent on the case outside of the courtroom?
A. I'm not sure of my individual hours.
Q. Your whole firm. How many hours -- well, let's just go with your hours. How many hours have -- roughly, just roughly -- like let's say if we've been here about 15 days, about how many days roughly do you think you've worked on this case outside of the court?

A. I haven't produced an invoice. You probably would have as good an idea of the time that I've spent here in trial.
Q. Right. That's why I'm asking about your time outside of court. Do you have any kind of rough estimate?
A. What time period are you looking at?
Q. Your entirety of your working on the case for Mr. Sheppard.
A. Personally, in preparing the work that I had done it was maybe a little over a hundred hours.
Q. And that doesn't include the court time, right?
A. No.
Q. So just 15 days times eight?
A. I haven't been billing for full days.
Q. That's about 120 hours. I'm just roughing it.
A. Well, we had half days. I don't charge for lunch. I don't charge --
Q. Do you want me to reduce that? I'll reduce that to a hundred hours.
MR. CAVALLO: Object to the form of the question.
THE COURT: I don't think it's a question. But let's move forward with these calculations, Ms. Martinez.
BY MS. MARTINEZ:
Q. So your rough estimate of your hours outside of court was?
A. It was a little over a hundred hours.
Q. Okay. So now we have about 200 times 560 -- and I do have a handy calculator.

Okay. I hope I did it right. It comes out to -- 112,000 is what you're going to be charging Mr. Sheppard for your work and your testimony here today; isn't that right -- roughly?

A. Yeah. That doesn't sound too far off.

MS. MARTINEZ: No further questions, Your Honor.

THE COURT: All right. Any redirect?

MR. CAVALLO: Yes, Your Honor. Brief.

REDIRECT EXAMINATION

BY MR. CAVALLO:

Q. Mr. Bouchner, you were -- do you remember you were asked in cross about the QuickBooks you received from the companies?

A. Yes.

Q. Did you also receive those QuickBooks from any other source?

A. Yes. They were included in the production by Mr. Cupersmith.

Q. Did you compare the QuickBooks received from the Government -- received from -- well, the Government through Mr. Cupersmith -- or vice versa, from Mr. Cupersmith through the Government. Did you compare those QuickBooks with the QuickBooks received from the companies?

A. I did.

Q. And what did it show?

A. Other than the fact that what I received from the company was in Excel and what was produced by Mr. Cupersmith was a PDF, they were otherwise identical.

Q. Do you remember in cross you were asked -- you were questioned about whether you performed a formal audit in connection with your analysis in this case?

A. Yes.

Q. Based on your 30 years as a forensic accountant, roughly, is a formal certified audit typical to give the kind of expert testimony you've provided in this case?

A. No. They're completely different engagements.

Q. Do you remember on cross you were shown a chart prepared by the -- a summary chart prepared by the FBI witness regarding HM Four?

A. Yes.

Q. And you were asked to identify any payments to workers in the use of funds in that chart?

A. I do.

Q. And you identified some possibilities, correct?

A. There were some individuals identified on that chart.

Q. Were there any transfers to HM-UP identified on that chart?

A. I believe there were.

Q. And based on your analysis and review of the documents, was HM-UP paying payroll to individual workers during the periods you reviewed?

A. Yes. They would have been included in my schedules.

Q. Are the opinions you've rendered in this case based on a tracing analysis?
A. No, they're not.
Q. And does anything you were confronted with on cross-examination change any of the overall opinions you gave in this case?
A. No, not at all.
MR. CAVALLO: Just give me one second, Your Honor.
THE COURT: All right.
(Pause in proceedings.)
MR. CAVALLO: I have nothing further.
THE COURT: Is Mr. Bouchner excused?
MS. MARTINEZ: Yes, Your Honor.
THE COURT: All right. Thank you, Mr. Bouchner. You are excused.
(Witness excused.)
THE COURT: The Defendant's next witness.
MS. WEINTRAUB: Judge, at this time, the Defense rests.
THE COURT: All right. And any rebuttal evidence on behalf of the Government?
MS. JIMENEZ: Yes, Your Honor.
The Government calls Alex Zaslow.
MS. WEINTRAUB: Judge, can we have a sidebar first?
THE COURT: Yes. Certainly. Come on forward.

(At sidebar on the record.)

MS. WEINTRAUB: So you were leaving the bench, as I was saying: "Should I do it now?" So we had a miscommunication. But I think it's proper now at this point to say we want to renew all our motions, objections with the Court. We intend to argue after the Government rests specifically the 404 arguments that have come in and the 403 and the cross-examination issues.

MR. ETRA: And the Rule 29.

MS. WEINTRAUB: And we would be moving for the Rule 29 at this time.

THE COURT: All right. At this point, as I indicated, the Court will reserve ruling and all motions are preserved so that we can get this case to the jury. All right?

MR. ETRA: Your Honor, we also have an objection that it's improper rebuttal. I want to make that objection. I don't want to -- so we're doing it now and we'll have that. So --

MS. WEINTRAUB: I mean, we have cases on it to show that it's clearly within the Court's discretion, obviously. But I think there should be a very specific proffer before this witness testifies so that the Court could make a knowledgeable decision.

THE COURT: Well, as I understood the proffer, other than the additional testimony that this individual is only going to be testifying on a limited basis with regard to the advice, the W-2 tax filings; is that correct?

MS. JIMENEZ: The advice regarding government loans, W-2s that were put in. There was direct testimony from the Defendant eons ago in December, when he started, saying that these accountants gave him advice on W-2 --

THE COURT: Yes. The advice.

MS. JIMENEZ: -- you know, how to categorize them. And so -- and -- but primarily it is centered around the emails in March and April of 2020.

THE COURT: All right. I'll determine whether it's true rebuttal.

MS. JIMENEZ: And the witness will say that it had to do with his payment of prior tax returns and the preparation of tax returns.

MR. ETRA: I would just point out that the reason for our motion is when Mr. Cupersmith testified, virtually in all respects he said: "Look, all these subjects, I don't know. It could have been Mr. Zaslow." And we were expecting Mr. Zaslow in this case and would have preferred in this case, so we could respond to a defense. Now we're in a position where they get the last word, when it really should have been done -- and I think they decided to hold him back.

THE COURT: All right. Well, I'll see if it's true rebuttal to what the Defendant has presented.

Okay. Let's continue.

MS. JIMENEZ: Yes. I'm sorry. Let me just -- so the Defendant testified on direct at the beginning and back in December that --

THE COURT: You don't have to recall his testimony I've got it.

(End of discussion at sidebar.)

THE COURT: All right. If we can bring in the witness, please.

MR. ETRA: Your Honor --

MS. WEINTRAUB: Judge, we have another problem.

MR. ETRA: -- I'm being shown new emails that I have never seen before and it's a stack.

MS. JIMENEZ: Your Honor, the stack --

MR. ETRA: Well, sorry. It's not a stack. It's --

MS. JIMENEZ: The stack is -- it's 95 percent the emails that were put in in relation to those communications around April of 2020.

THE COURT: All right. So these are already emails in evidence?

MS. JIMENEZ: Most of them are, and then there's March when this discussion --

THE COURT: All right. Well, how many of those are not in evidence?

MS. WEINTRAUB: Judge, there is a specific issue we need to bring to the Court before it's even asked about.

THE COURT: All right.

MS. WEINTRAUB: I'm sorry. Could we just come back to the sidebar?

THE COURT: All right. Come on forward.

Mr. Zaslow, if you'll just have a seat for a moment.

(At sidebar on the record.)

MS. WEINTRAUB: Judge, I don't see how it could be proper rebuttal. I don't see how it could possibly, possibly, possibly be proper rebuttal when they are going to go into again he didn't pay bills. That's not rebuttal of anything.

THE COURT: What are the exhibits that are not in evidence? Those are the only ones in dispute right now.

MS. JIMENEZ: They had a discussion with the Defendant beforehand --

THE COURT: Just give me the exhibits not in evidence.

MS. JIMENEZ: That's an attachment. The whole middle is what's --

MR. ETRA: I don't know what you gave the Judge.

THE COURT: These are emails. So --

MS. JIMENEZ: With an attachment. So the email communication started about him paying his bill, and this is why the tax returns were not prepared. And then he contacts them in April asking for the tax return to be done. And --

THE COURT: Okay.

MS. JIMENEZ: So this predates the April -- it's putting the conversations in context because all of the conversations were about him paying his bill and preparing the tax returns. They were not about PPP. That's the point. That's what the conversations were about.

THE COURT: Okay. So why do you need the documents to ask Mr. Zaslow about --

MS. JIMENEZ: I don't need the --

THE COURT: Yeah. So why do you need these documents to ask him about his conversations? Why do we need to show all of these documents?

MS. JIMENEZ: They are the emails that predated the emails they put in.

THE COURT: Well, what's the point -- I mean, it's just the paper is not necessary if you're talking about conversations.

All right. Step back.

(End of discussion at sidebar.)

THE COURT: All right. Mr. Zaslow, come on forward, sir.

All right, sir. If you'll remain standing. Raise your right hand to be placed under oath.

ALEX ZASLOW, REBUTTAL WITNESS, SWORN

COURTROOM DEPUTY: Thank you. You can have a seat.

THE COURT: If we can ask for your indulgement about

10 or 15 minutes and then we'll adjourn for the evening.

All right. Ms. Jimenez?

MS. JIMENEZ: Yes, Your Honor.

COURTROOM DEPUTY: Would you please state your name and also spell it for the record.

THE WITNESS: Alex Zaslow.

COURTROOM DEPUTY: Can you please spell your last name.

THE WITNESS: Sure. Z-A-S-L-O-W.

COURTROOM DEPUTY: Thank you.

DIRECT EXAMINATION

BY MS. JIMENEZ:

Q. Good afternoon, Mr. Zaslow. Where do you work?

A. I work for Cupersmith, Wilensky, Stempler & Co. We just merged with another accounting firm as of November 1st called Verna & Associates.

Q. All right. Are you a certified public accountant?

A. Yes.

Q. When did you join Mr. Cupersmith's firm?

A. In August of 2008.

Q. Have you assisted or prepared tax returns for the Defendant Eric Sheppard and his businesses?

A. Yes.

Q. How long have you been doing that?

A. Since 2008.

Q. Did you deal with an accounting department?
A. Yes.
Q. Up until what time did you deal with an accounting department?
A. I would say --
MR. ETRA: Your Honor, I object on scope based on rebuttal.
THE COURT: Yeah. The objection is sustained. If we can get to the testimony, please.
BY MS. JIMENEZ:
Q. All right. At some point did you stop dealing with an accounting department?
A. Yes.
Q. When was that? When was that?
MR. ETRA: Your Honor, same objection. It's --
THE COURT: Could we clarify with regard to the accounting department and then we can get to the testimony.
MS. JIMENEZ: Yes.
BY MS. JIMENEZ:
Q. When did you stop dealing with an accounting department?
A. I would say some years back, five to seven years back.
MR. ETRA: Your Honor, objection. This is not the area that was proffered. They're making argument about the scope of the accounting department. I move to strike.
THE COURT: All right. Let's just go to the

testimony. The objection is noted. It's overruled.
BY MS. JIMENEZ:
Q. All right. Thereafter, with whom did you deal at Mr. Sheppard's companies in relation to the preparation of tax returns?
A. Most recently, Jeanette Gonzalez.
Q. All right. With whom -- okay. So you dealt with Jeanette Gonzalez. Did you deal with anyone else in the last few years before your firm discontinued their work with the Defendant?
A. No.
Q. Focusing on the last several years, say starting in 2017 through -- was it 2022 when you discontinued any work with the Defendant?
A. Yes.
Q. Did you provide any advice regarding W-2 employees or 1099 contractors?
A. I did not.
Q. Did you provide any advice regarding how people who were paid by the companies should be categorized for payroll purposes?
A. I did not.
Q. Did Cupersmith's firm provide payroll services to the Defendant's companies?
A. We did not.
MR. ETRA: Your Honor, objection. It's beyond the

scope.

THE COURT: Overruled at this point.

BY MS. JIMENEZ:

Q. Did you -- are you -- based on your work experience and being an accountant, are you familiar with W-2s?

A. Yes.

Q. Who generates the W-2?

MR. ETRA: Beyond the scope.

THE COURT: Sustained.

MS. JIMENEZ: Well, it goes to the exhibit.

THE COURT: It's sustained with regard to rebuttal evidence.

BY MS. JIMENEZ:

Q. Do the W-2s indicate whether the company paid payroll taxes to the IRS?

MR. ETRA: Beyond the scope.

THE WITNESS: That's an informational return.

MS. JIMENEZ: Your Honor --

THE COURT: Beyond the scope of?

MR. ETRA: Rebuttal.

THE COURT: Sustained.

MS. JIMENEZ: Your Honor, it has to do with the --

MS. WEINTRAUB: You should have called him in your case in chief.

THE COURT: This is rebuttal evidence. The objection is sustained.

MS. JIMENEZ: Your Honor, we discussed this at sidebar.

THE COURT: We did. So let's move forward with the testimony.

BY MS. JIMENEZ:

Q. Were you provided by HM Management and Development any W-2s?

A. No.

MR. ETRA: Objection, Your Honor. Scope.

THE COURT: Overruled.

(Pause in proceedings.)

BY MS. JIMENEZ:

Q. Does the -- do the W-2s reflect whether any payroll taxes were paid to the IRS?

A. It only reflects payroll taxes that were withheld.

Q. Does it tell you whether 941s are filed with the IRS?

MR. ETRA: Objection. Scope -- beyond the scope of rebuttal.

MS. JIMENEZ: It's not. It was --

THE COURT: Overruled.

BY MS. JIMENEZ:

Q. Does it tell you whether any 941s were filed with the IRS?

A. No, it does not.

Q. All right. Now I want to take your attention to March of

2020. Had you, at that point in March of 2020, prepared the Defendant's personal tax returns for tax year 2018?

MR. ETRA: Personal tax returns. Beyond the scope of rebuttal.

THE COURT: Sustained.

MS. JIMENEZ: Your Honor, that is precisely what this is about.

THE COURT: The Defendant's personal tax returns is what you're asking Mr. Zaslow about?

MS. JIMENEZ: That is what these emails were about.

MS. WEINTRAUB: Judge, I object to the speaking dialogue by the prosecutor.

THE COURT: The objection is sustained. You may continue.

BY MS. JIMENEZ:

Q. In March of 2020, Mr. Zaslow, were there tax returns for tax year 2018 that had not been prepared by your firm?

A. Yes.

Q. For the Defendant?

A. Yes.

Q. Why was that?

A. Because he --

MR. ETRA: Objection. Beyond the scope.

THE COURT: Overruled. I'll allow that. You may answer the question, sir.

THE WITNESS: Generally, with the arrangement with the client that -- we would ask to be paid before we released returns. Also, there were financial records that we had not received to prepare the returns at that point.

MR. ETRA: Your Honor, could we have a continuing objection on 404(b), 403 issues?

THE COURT: You may.

BY MS. JIMENEZ:

Q. And then did there come a time at the beginning of April --

MS. JIMENEZ: And that is a Defense exhibit, but I don't know what exhibit number it is because I have my own copy.

THE COURT: I need a Defense exhibit number. Perhaps Mr. Cavallo can help.

MR. CAVALLO: Sure. Can I just see it to confirm before I say? If I see one thing, I'll be able to tell.

(Pause in proceedings.)

BY MS. JIMENEZ:

Q. All right. Let me show you Defense Exhibit Q-25. March 30th, Eric Sheppard writes to you asking for tax returns. Do you see that?

A. Yes.

Q. So what is going on during this email exchange?

A. He's asking for his personal return. He says he applied for some government programs. You've covering it.

Q. All right.
A. And then he says -- okay. Then he says if the 2018 is not done they will not process the application.
Q. What 2018 tax returns were outstanding?
A. From what I can recollect, it was HM Management, Kansas City, his personal return. That's all I can recall.
Q. All right. All right. So...
(Pause in proceedings.)
BY MS. JIMENEZ:
Q. And -- so I'm sorry. So then March 30th Mr. Sheppard asks what you need from Jeanette, and then there were a number of things still outstanding, correct?
A. That's correct.
Q. Now, there's an email that was not included. Did you ask for any payroll tax returns, which was part of this email exchange?
A. Yeah. I just saw that part. You're covering it.
MR. ETRA: Your Honor, I thought we weren't doing --
MS. JIMENEZ: Well --
MR. ETRA: Hang on. First of all, it's being --
THE COURT: Are these exhibits all in evidence?
MS. JIMENEZ: Some of them are. Some of the email --
THE COURT: Can you just ask the questions without the use of the emails that are not in evidence, Ms. Jimenez?
MS. JIMENEZ: Yes.

BY MS. JIMENEZ:

Q. So what was outstanding?

A. I remember from one of the emails it said everything, the financials, the QuickBooks reports, the profit and loss, the trial balance, the quarterly payroll tax returns, the general ledger, in order for me to complete the tax returns.

Q. Did you obtain any quarterly payroll tax returns?

A. We did not.

Q. What did you rely on?

A. Information provided by them.

Q. All right. And then there came a point when you set up a call, correct?

A. That's correct.

MS. JIMENEZ: This is in evidence as a Defense exhibit -- actually, April 21st -- April 21st. This is a Government exhibit.

THE COURT: What exhibit number, please?

MS. JIMENEZ: April 21st, 2020.

THE COURT: All right. While we're looking for that, come sidebar, please. Come sidebar.

(At sidebar on the record.)

THE COURT: I can't keep this jury here when we are just going at the slowest pace possible. So how much time do we need?

MS. JIMENEZ: We need 10 minutes.

THE COURT: Ten minutes. And how much time do you need on cross?

MR. ETRA: I'm guessing 15, 10 minutes.

THE COURT: All right. Then I'm going to need to bring this witness back. It's already 10 after five. I can't keep this jury here. So we need another 30 minutes? Do we need another 30 minutes total?

MS. JIMENEZ: -- questions about what they actually discussed on the phone.

THE COURT: All right.

MS. JIMENEZ: I mean --

THE COURT: I can't leave -- and I've got a court reporter that's doing dailies for you, and I can't have her here all night. So if you've got -- you know, we'll have to bring him back tomorrow morning.

MS. JIMENEZ: I think we can be done in 15 minutes. I really do.

MR. ETRA: I don't think my cross will be that long, but I'm going to ask some questions about when you were contacted by the Government. I'm going to cover some of the basics. I can't promise you my cross will be less than 15 minutes. I hope it is. I just don't know.

THE COURT: I'll ask them for another 15 minutes, but that's it. And then...

(End of discussion at sidebar.)

THE COURT: Ladies and Gentlemen, is there anyone here that cannot stay for an additional 15 minutes? If you cannot, just raise your hand and let me know.

All right. Then let's continue.

BY MS. JIMENEZ:

Q. All right. Mr. Zaslow, this is Government Exhibit...

THE COURT: Just call out the exhibit number, please.

MS. JIMENEZ: Go to the end.

(Pause in proceedings.)

MS. JIMENEZ: Apologize for that.

It's Government's Exhibit 81.

BY MS. JIMENEZ:

Q. All right. So Mr. Zaslow, Mr. Sheppard wrote to Mr. Cupersmith, and this email was forwarded to you. Did you see that?

A. Yes.

Q. And he is asking to speak with the accountants; is that right?

A. Yes.

Q. And at this point, have you, in -- April 21st, have you completed the tax returns as he's requesting?

A. The only tax returns we did not complete was his personal return at that point and WSG Kansas City.

Q. Why had you not completed them?

A. We did not receive payment before we released the returns,

and that was our arrangement.
Q. That was your arrangement with the Defendant?
A. Correct.
Q. What was the arrangement?
A. So we provided proposals for invoices to do the tax returns ahead of the jobs.
MR. ETRA: Your Honor, beyond the scope.
THE COURT: Overruled.
BY MS. JIMENEZ:
Q. So then did you end up having a call with the Defendant not long after this?
A. Correct. We had a call to discuss this specific situation.
Q. What was the situation you discussed in that call with the Defendant?
A. That he had not paid us for the returns that we prepared, and we weren't going to release them until he did.
Q. All right. In that conversation, did Mr. Sheppard ask you anything about Paycheck Protection Program loans?
A. No, he did not.
Q. Did he ask you anything about Economic Injury Disaster Loans?
A. No, he did not.
Q. Did he ask you anything about any government loans?
A. No, he did not.
Q. Did he ask you whether -- you know, as to what company

should be applying for any type of government loan?
A. No, he did not.
Q. Did he ask you about what tax year or what year -- what years' figures or number of laborers he should be using for any type of loan?
A. No, he did not.
Q. Did you provide him -- you or -- was Mr. Cupersmith on that call as well?
A. Yes.
Q. Did you or Mr. Cupersmith provide him or offer him any advice -- given the time frame we were talking about, April of 2020, did you provide him -- irrespective of whether he requested it, did you provide him any advice regarding applying for any government type of loan?
A. No. We provided no advice on the government loans.
Q. Did you -- subsequent to that conversation that occurred shortly after this email, did you at any point in 2020 or in 2021 provide Mr. Sheppard any advice regarding any COVID-related government loan?
A. No, we did not.
Q. Did you provide that advice for other clients?
A. Sure. Yes.
Q. After the April phone call, did Mr. Sheppard, whether in writing or orally, request advice from you about any government loan and whether he qualified or how he should apply?

MR. ETRA: Asked and answered.

THE COURT: Sustained.

MS. JIMENEZ: That was a different question.

BY MS. JIMENEZ:

Q. I'm sorry?

A. No, he did not.

MS. JIMENEZ: That's all I have, Your Honor.

THE COURT: All right. Cross-examination.

MR. ETRA: Could we put up -- put up Exhibit Q-25.

CROSS-EXAMINATION

BY MR. ETRA:

Q. Good afternoon. We haven't met. How are you?

A. Good, thanks. How are you?

COURTROOM DEPUTY: Is this in evidence, Counsel? I'm sorry.

MR. ETRA: It's in evidence, Your Honor. Could we go to the very bottom here.

BY MR. ETRA:

Q. Okay. So we're in the last page and hopefully some language has been highlighted. This is an email from Mr. Sheppard to you on March 30th, correct?

A. Correct.

Q. And he's saying to you: "I applied for some of the government programs." Do you see that?

A. Yep.

Q. So isn't it correct that Mr. Sheppard notified the Cupersmith firm that he had applied for government programs?
A. Yes.
Q. Okay. And you said you provided advice to other clients, correct?
A. Correct.
Q. But you did not provide any advice to Mr. Sheppard about the government programs. Is that your testimony?
A. Correct.
Q. And your firm had been working with the Sheppard companies for -- before you joined the firm, right?
A. That's correct.
Q. Twenty years or so?
A. That's correct, at least.
Q. And you joined -- you began working with the Sheppard companies approximately when?
A. August 2008.
Q. August 2008. Okay.
Oh. August 2008. Okay. So you personally have been working with Ms. Gonzalez since August 2008. So by this point it's been 12 years, right?
A. That's not correct.
Q. Seventeen?
A. I did not work directly with Jeanette for all those years. It was only recently.

Q. I see. Fair enough.
So you worked with the Sheppard entities for about 17 -- about 12 -- sorry -- about 12 years?
A. 2008 to 2022.
Q. 2008 to -- okay. Great. And nevertheless, you chose not to -- to tell Mr. Sheppard: "Hey, we should talk about these government programs." Is that your testimony?
A. Correct.
Q. Okay. And that's because you felt you were owed money, correct?
A. That's not correct.
Q. You were owed money?
A. We were owed money, but that's not the reason why we did not talk about PPP.
Q. Well, what was the reason?
A. The reason was we did not ask because certain clients were handling them themselves.
Q. Okay. When did Mr. -- I'm sorry. So you decided that Mr. Sheppard, when he mentions government programs, that that's his way of telling you he doesn't want any advice?
A. He never asked for advice.
Q. Okay. He never asked for advice, but he's telling you that he applied for government programs, right?
A. That's correct.
Q. And you decided not to respond and say: "Hey, Eric. We

should talk. There are some rules here," correct?
A. That's correct.
Q. Okay. And did you tell Mr. Cupersmith that -- what you knew, that Mr. Sheppard had applied for government programs?
A. I don't recall from that specific email when I told Mr. Cupersmith.
Q. And the reason you don't recall is because it was some time ago, correct?
A. That's correct.
Q. Is that something you should be telling your boss: "Hey, your longtime client, Mr. Sheppard, is applying for government programs in this crazy time period you're living in in March 30th"?
A. Not necessarily.
Q. Not necessarily. Not important. Okay.
And if we can go to -- in your direct, you looked at this email, but you only focus on the second part of it about asking for tax returns, right?
A. Say that again.
Q. In your direct you focused -- in the direct examination you were focused on the rest of this email where Mr. Sheppard is asking for tax returns, right?
A. Well, that was the only question he said to answer: "Please, let me know if you" --
Q. Is it fair to say you ignored the comment that Mr. Sheppard

was applying for government programs?
A. I didn't ignore it. I read the statement.
Q. If you didn't ignore it, what did you do with it?
A. I didn't ask the question: "Do you need my help?"
MR. ETRA: Could we put up --
BY MR. ETRA:
Q. By the way, do you have any notes of -- the conversation that you talk about that happens in April, do you have any notes of those?
A. No notes.
Q. So you're going completely from memory?
A. Yeah. It was a phone call.
Q. And before you looked at these emails, did you even remember that he had raised the issue of government programs with you?
A. Yes.
Q. So you remember a few years later that in March 30th Mr. Sheppard raised the issue of government programs, right?
A. Correct.
Q. And you still remember that, even though he raised that issue with you, you didn't respond and give him any advice. Is that your testimony?
A. That's correct. That's also the case with other clients as well.
Q. So he's not the only client that when they -- so many of

your clients will tell you they have government programs, and he's not the only one that you didn't respond to. Is that your testimony?

A. That's correct.

Q. Okay.

MR. ETRA: All right. Could we put up Exhibit Q-24.

BY MR. ETRA:

Q. This is an email the day before. Do you see that?

MR. ETRA: Sorry. I should say the exhibit number.

MR. CAVALLO: Defendant's Q-24.

BY MR. ETRA:

Q. Have you seen --

MR. ETRA: Let's do it so that the witness could see the whole document. And then we'll make it -- should we make it bigger?

THE WITNESS: I can see it.

BY MR. ETRA:

Q. Could you just take a moment to review and tell me when you're ready for me to ask you questions.

A. (Witness complies.)

(Pause in proceedings.)

THE COURT: All right. Can we proceed with the questioning.

THE WITNESS: Sure.

BY MR. ETRA:
Q. Do you recognize the document Q-24?
A. I don't recall this document.
Q. Okay. Do you recall documents like this being sent from your firm to the clients as a whole?
A. Yeah.
Q. And basically --
A. Correct.
Q. -- offering -- sorry. We're talking over each other.
A. This looks like a mass emailing from our office.
Q. Right. And here in this mass email on March 29th your firm is telling its clients -- which include Mr. Sheppard, correct? Right?
A. Yes.
Q. And Mr. Sheppard owed you money at the time, right?
A. Correct.
Q. But you still did the blast -- you included him in the blast email, correct?
A. Yes.
Q. Okay. And that's because you were soliciting -- basically saying -- I could summarize it or we can go line by line -- "Hey, the PPP program is a daunting task" -- on the bottom -- "So reach out to us if you need any help," or something, right?
A. Yes. It was a mass email sent to all of our clients on the email list.

Q. Right. And that included Mr. Sheppard, right?
A. Correct.
Q. And you're identifying that the application process for these programs seems like a daunting task, correct?
A. Correct.
Q. And then you say -- or your firm, I should say, "Since we are familiar with your company and its operations, we can streamline the process with you"?
A. Yes. It's general verbiage. It's not specific.
Q. Well, I know. But in this particular case your firm had dealt with the Sheppard companies for years, correct?
A. Uh-huh.
Q. Correct?
A. Yes.
Q. Some of your clients on the blast had been clients for maybe only a few years, right?
A. Yes.
Q. This is probably -- at the time was one of your longest-standing clients, correct?
A. Correct.
Q. So you were probably more familiar with the Sheppard companies than you were with a lot of your other clients, correct?
A. Correct.
Q. You had a huge history with them?

A. Correct.
Q. And the day after this email goes out --
MR. ETRA: If we can go back to Q-25.
BY MR. ETRA:
Q. -- is when Mr. Sheppard reaches out to you and tells you he's applying for government programs, right?
A. Correct.
Q. And your response is to ignore that -- well, I shouldn't say ignore -- that wasn't your word. Your response is to not respond or give any advice or direction, correct?
A. Correct.
Q. And what's the other --
THE COURT: How much further cross-examination do you have, Mr. Etra?
MR. ETRA: It's more than five minutes, Your Honor. I apologize.
THE COURT: All right. Then we're going to need the witness to come back.
MR. ETRA: I understand, Your Honor.
THE COURT: All right. Then Ladies and Gentlemen, at this point in time we are going to adjourn for the evening.
Please remember that you are not to discuss this case with anyone nor permit anyone to speak with you. Everything learned about the case is learned in this courtroom.
I would ask that you place your juror notebooks in the

jury room. And we will begin tomorrow morning at precisely nine a.m. I do anticipate that the rest of the witness's testimony should take no longer than 15, 20 minutes. And then at that point in time we would proceed to instructions on the law and closing arguments by the attorneys.

Please have a wholesome breakfast, since we will be providing lunch to you, but that lunch will be provided at the time that you deliberate, which I anticipate will be approximately 1:15. So you can certainly bring some snacks in, but I would have a large breakfast so that you can anticipate that we'll have a lunch a little bit later than usual.

So have a pleasant evening. I'll see you tomorrow morning at nine a.m.

COURT SECURITY OFFICER: All rise.

(Jury not present, 5:23 p.m.)

THE COURT: Mr. Zaslow, I will see you tomorrow morning at nine a.m. Since you are on the witness stand, you're not to discuss your anticipated testimony or any aspect of the case.

Have a pleasant evening, sir.

THE WITNESS: Thank you. This way?

THE COURT: This way, sir.

All right. Please have a seat.

I anticipate that Mr. Zaslow's testimony should take no longer than 30 minutes. I don't anticipate that his testimony would change the jury instructions that were provided to the Court late last night. The parties have provided supplemental instructions. Your objections are preserved by way of your written filings, so there is no need to proceed with a charge conference in which the parties are merely going to reargue. But what I am going to do is give you the Court's set of proposed jury instructions, and I will see you tomorrow morning at 8:30. At that time, you will have the opportunity to place on the record any additional objections to the Court's proposed instructions.

With regard to the Defendant's motions, certainly I've reserved ruling, and we can hear that motion at a later time. I say that because I am certainly sensitive to the fact that the parties have specifically requested from my court reporter dailies. She works late into the evening. She works until close to midnight and then she drives to -- north to another county. So I'm not going to require that she spend any more time in this courtroom.

So Josue, my law clerk, will be providing you with copies of the Court's proposed instructions based on the submissions that parties have made, and I'll see the parties here tomorrow morning at 8:30 so we can address any further issues with regard to the Court's instructions.

MS. WEINTRAUB: Judge, based on what's happening in real time, we didn't have time to prepare, but I am going to submit, with the Court's permission, one additional proposed jury instruction on rebuttal testimony.

THE COURT: Well, the Court can certainly consider that and we can address that tomorrow morning at 8:30. But to give you an opportunity to prepare for your closing arguments, I have provided what I intend to instruct the jury with regard to the law on this case.

With regard to the Court's schedule tomorrow, I do anticipate that we'll get started right at nine o'clock. We'll have Mr. Zaslow's testimony until approximately 9:30. The Court will then give instructions on the law, and I suspect that will take until ten o'clock. At that point in time, we will then proceed with closing arguments. The Court is providing both sides with an hour and a half.

How would the Government like to divide this time?

MS. WEINTRAUB: Judge, I thought we had two hours.

THE COURT: And again, since I do want to allow for the jury to have lunch, and to allow for the remaining rebuttal evidence, I am giving the parties an hour and a half.

How does the Government want to divide this?

MS. JIMENEZ: An hour and five minutes, and 25 minutes for rebuttal.

THE COURT: So we'll proceed with the --

MS. WEINTRAUB: Judge --

THE COURT: Yes?

MS. WEINTRAUB: With all due respect, there is so much detail, the documents in this case that we want to simplify for the jury, it is a mammoth task, one that I have been struggling with for days. I have finally put it together. I thought we had two hours and it was still over. And in this three-week trial that was supposed to be seven days, we have gone through -- the loans alone are thousands of pages. I need an hour -- there are 14 charges, Judge. Even at five minutes per charge, I just -- there's no way that this can be done in an hour and a half.

I mean, Judge, we told the Court yesterday about another witness, Mercedes Fonseca, we were going to call. We made the strategic decision not to call her, get rid of her, just so we can end today, so we can be finishing this case. But now to close in an hour and a half after this testimony, it's --

THE COURT: Here's the problem: The problem is is this jury needs a break. The jury needs a lunch break. And I don't want to interrupt either side's closing arguments by allowing the jury to have lunch and then to have either the rebuttal close or to then extend -- I would be breaking up the arguments, and that's the concern that the Court has. And the hour and a half is sufficient for both sides to remind the jury of the evidence in this case. So I am permitting an hour and a half.

MS. WEINTRAUB: Judge, I don't care if you break mine up. That's how important it is to be able to explain and simplify --

THE COURT: Well, I think if you're planning on going through thousands of pages of documents in your closing arguments, the additional 30 minutes is not going to make a difference. So an hour and a half for both sides is sufficient.

I anticipate that we should be done for the jury to deliberate at approximately 1:15, 1:30, and then we'll allow the jury to deliberate while they're eating lunch.

I would require that the Government provide tomorrow morning a clean laptop with all the exhibits uploaded and a clean Superseding Indictment. The Government should be providing one exhibit list with the Plaintiff's and the Defendant's exhibits. So I would expect that the parties confer this evening so that tomorrow the laptop is uploaded with all of the exhibits so there is no issue with regard to the exhibits. You've been provided dailies, so you know what exhibits have been admitted into evidence.

MS. WEINTRAUB: Judge, in addition to everything else that's not going on, the Court has permitted not just the 404(b) that was noticed, the Court has permitted at least eleven additional 404(b) charges that we counted that we will enumerate when the Court gives us time. Eleven. They have gone through the INS, the visa documents. They have gone through it all, not just what they said they would with the engagement letter. They have gone through numerous, numerous things. I wasn't even allowed to cross-examine Maged Salem on his interview with the FBI in which he lied, which I had evidence of.

Judge, there's such a thing where, you know, the timing of this -- I understand the Court's in a hurry. I understand we're all in a hurry. I understand the jury only has a certain amount of time. But due process has got to trump some of this other stuff.

THE COURT: I don't think that due process is involved by giving you an hour and a half as opposed to two hours of closing argument. So the Court has made its decision. I will see the parties here tomorrow morning at 8:30.

You can take your time to leave the courtroom, and I will see you tomorrow morning.

Have a pleasant evening.

COURT SECURITY OFFICER: All rise.

(Proceedings adjourned at 5:31 p.m.)

UNITED STATES OF AMERICA)

ss:

SOUTHERN DISTRICT OF FLORIDA)

C E R T I F I C A T E

I, Yvette Hernandez, Certified Shorthand Reporter in and for the United States District Court for the Southern District of Florida, do hereby certify that I was present at, and reported in machine shorthand, the proceedings had the 10th day of January, 2024, in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that this transcript contains pages 1 - 263.

IN WITNESS WHEREOF, I have hereunto set my hand at Miami, Florida, this 25th day of February, 2025.

/s/Yvette Hernandez

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